Dec 2024 – AML/CFT Amendment Bill 2024 (Australia)

Content:

Dear Friends (esp. friends in Australia),

Towards 2024 end, the Australian Parliament finally passed the long-waited AML/CFT Amendment Bill 2024 (the Bill) on 29 Nov 2024. This is significant for Australian compliance with FATF standards before its 2026 mutual evaluation. Fellow accountants and other designated services providers will need to get prepared their AML compliance journey. The estimated total cost for implementing the Bill is A$13.9 billion.

AA & T Consulting Advisory team

Objectives of the Bill

The Bill simplifies, clarifies and modernises the AML/CTF regime and helps industry better understand their obligations and reduce regulatory burden where possible.

The Bill has 3 key objectives.

- Expand the AML/CTF regime to additional high-risk services provided by tranche two entities
- Modernise the regulation of digital currency and of virtual asset and payments technology.
- Simplify and clarify the AML/CTF regime to increase flexibility, reduce regulatory impacts and support businesses to better prevent and detect financial crime.

Key Changes

Key changes brought by the Bill are as follows:

- Regulating additional high-risk services: including accountants, lawyers, real estate professionals, dealers in precious stones and precious metals, conveyancers, and trust & co. service providers (tranche two entities)
- Changes for the virtual assets sector
- Changes for the financial sector
- Changes to AML/CTF program requirements
- Changes to customer due diligence
- Changes to the tipping off offence
- Repeal of the Financial Transaction Reports Act 1988
- AUSTRAC information-gathering powers

For more details, please refer to Appendix 1.

What does it mean to be regulated?

The AML/CTF regime uses a 'designated services' model for regulation. Not all businesses in tranche two sectors would be regulated by the AML/CTF regime — only businesses that provide certain services will be covered by the Bill.

If businesses provide one or more designated services, they will have to put in place measures to protect their business from exploitation by criminals, including measures to allow for early identification of criminality or potential criminal activity. The business would have to fulfil the following key AML/CTF obligations to protect the business from misuse by criminals. The key obligations for reporting entities under the AML/CTF regime are:

- Enrol with AUSTRAC
- Develop and maintain an AML/CTF program tailored to their business
- Conduct initial customer due diligence
- Conduct ongoing customer due diligence
- Report certain transactions and suspicious activities
- Make and keep records

The effective dates on the changes are mostly 31 Mar 2026. It is better to get prepared early rather than waiting for the last few months.

How can AA & T Consulting help?

If you need any help on your AML processes, feel free to email us at advisory@aathk.com. We are glad to share our experiences..

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Appendix 1: The Key Changes introduced by the AML/CTF Amendment Bill 2024

1. **Regulating additional high-risk services:**
   The Bill established new designated services and/or businesses that will bear AML/CTF obligations under the AML/CFT Act, including:
   - real estate professionals
   - dealers in precious stones and precious metals
   - professional service providers such as lawyers, conveyancers, accountants*, and trust and company service providers

   ** it does not cover all professional services provided by accountants.*

   These professions/business areas are recognised domestically and globally as high-risk for money laundering exploitation. As legal practitioners will be brought into the AML/CTF regime, the Bill would also clarify the treatment of legal professional privilege under the AML/CTF Act.

   Implementation and commencement
   AML/CTF obligations would not apply until 1 July 2026 for tranche two entities that provide new designated services. These entities should be able to enrol with AUSTRAC from 31 March 2026. This is to allow time for newly regulated entities to understand and prepare for their new AML/CTF obligations.

2. **Changes for the virtual assets sector**
   The Bill strengthens the AML/CTF regime on the rapidly growing virtual asset sector against exploitation by criminals. It extends regulation to additional virtual asset-related services and covers exchanges between virtual assets and fiat currency, the Bill adds the following designated service into the AML/CTF Act:
   - exchanges between one or more other forms of virtual assets
   - transfers of virtual assets on behalf of a customer
   - safekeeping or administration of virtual assets
   - participation in and provision of financial services related to an issuer's offer and/or sale of a virtual asset.

   The Bill also inserted a new definition of 'virtual asset' in the AML/CTF Act to replace the existing definition and terminology of 'digital currency', to provide clarity and ensure additional asset types such as stablecoins and non-fungible tokens (NFTs) are captured.

   Implementation and commencement
   Changes for the virtual assets sector would commence on 31 March 2026.

3. **Changes for the financial sector**
   The Bill also contains measures that are relevant to all reporting entities who provide financial designated services, including financial institutions and banks, virtual asset service providers and remittance service providers.

   a) Value transfer obligations and International Value Transfer Service reporting
   The Bill streamlines various existing concepts of funds transfer and a designated remittance arrangement to into a single value transfer chain.
   This facilitates the passage of key information about the transfer, regardless of technology used.
   The Bill also amended the AML/CTF Act to include an updated concept of International Value Transfer Service (IVTS) reports, which replaces current International Funds Transfer Instruction (IFTI) reports.
   Obligations for value transfer services will commence on 31 March 2026.
   Transitional rules will preserve the existing requirements for IFTI reports for a period of time to allow for reporting entities and AUSTRAC to implement necessary technical systems changes.

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b) Bearer negotiable instruments

The Bill repealed the current definition of a 'bearer negotiable instrument' and replace it with a new definition that is aligned to the FATF definition. The new definition would not capture instruments that are 'non-bearer' or 'non-negotiable' for the cross-border movement reporting requirements. This responds to industry concerns that the current definition is unclear and too broad and would reduce the regulatory burden of reporting unnecessary movements.

These changes would commence on 1 July 2026.

4. **Changes to AML/CTF program requirements**

The Bill updates the existing requirement for an AML/CTF program. The changes require reporting entities to undertake appropriate measures that focus on identifying, assessing and mitigating money laundering, terrorism financing and proliferation financing risk. This replaces the current 'check-box' approach of simply having an AML/CTF program.

The revised AML/CTF program obligation would include:

- an overarching risk assessment to consider the ML, TF and proliferation financing (PF) risks the reporting entity may reasonably face
- proportionate risk mitigation measures to respond to the risk assessment
- a new simplified reporting group concept to allow reporting entities to manage and mitigate common risks more efficiently
- the roles and responsibilities of a reporting entity's governing body and AML/CTF compliance officer
- simplified obligations for Australian companies operating overseas through a foreign branch or subsidiary of an Australian reporting entity.

These reforms will commence on 31 March 2026.

5. **Changes to customer due diligence**

Customer due diligence (CDD) requires reporting entities to:

- identify, and verify the identity of, their customer and certain associated persons
- understand the ML, TF and PF risks associated with providing designated services to the customer and take steps to mitigate these risks.

The Bill establishes an improved, outcomes-based framework for the CDD requirements under the AML/CTF Act. In particular, the measures in the Bill seek to:

- reframe and clarify the core requirements for reporting entities to carry out initial and ongoing CDD
- clarify when enhanced CDD must be applied
- streamline the circumstances when simplified CDD may be applied.

Schedule 2 would commence on 31 March 2026.

CDD exemption for assisting the investigation of certain offences

The Bill reframes the exemption for assisting the investigation of certain offences currently at Chapter 75 of the AML/CTF Rules into the AML/CTF Act. It also replaces the concept of 'Chapter 75 exemptions' with 'keep open notices'.

A 'keep open notice' allows a reporting entity to refrain from undertaking certain CDD obligations if they reasonably believe it could alert the customer to the existence of a criminal investigation.

A keep open notice does not compel a reporting entity to continue to provide a designated service to a customer.

A law enforcement agency would no longer need to seek the exemption from AUSTRAC. Instead, the agency could issue a keep open notice directly to a reporting entity, if the legislative preconditions are met. This streamlines the process by removing the largely administrative, intermediary role currently performed by AUSTRAC. AUSTRAC will retain a role in overseeing the issue of notices by agencies, but without delaying the investigation of serious criminal activity.

These changes will commence on 31 March 2026.

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Changes to the CDD exemption for gaming and gambling sector
The Bill moves the exemption currently at Chapter 10 of the AML/CTF Rules into the Act and lower the CDD exemption threshold for gambling service providers from less than A$10,000 to less than A$5,000. This includes casinos, on-course bookmakers, totalisator agency boards and gaming machine operators when providing certain gambling services to customers.
The current threshold is significantly higher than the requirements of the FATF which is USD/EUR3,000, roughly A$5,000. The A$5,000 threshold will also align with current electronic gaming machine requirements for payouts outlined in New South Wales and Queensland state legislation. Aligning with pre-existing regulation is anticipated to minimise the regulatory impact for gambling service providers.
The change to the threshold commences 31 March 2026.

6. **Changes to the tipping off offence**
Schedule 5 of the Bill would reform the current prohibition against reporting entities 'tipping off' their customer about the formation of a suspicion relating to their behaviour. The new offence focuses on preventing the disclosure of information where it would, or could, reasonably prejudice an investigation. The new framework is intended to provide greater flexibility for reporting entities seeking to disclose information for legitimate purposes, including sharing information within reporting groups to effectively identify, mitigate and manage their collective risks.
Schedule 5 commences on 31 March 2026.

7. **Repeal of the Financial Transaction Reports Act 1988**
The Bill repealed the Financial Transaction Reports Act 1988 (FTR Act). This would deregulate cash dealers captured by the FTR Act, including solicitors, motor vehicle dealers, sellers of traveller's cheques, and offshore online remitters; and streamline and simplify AML/CTF regulation. This mean there is only a single source of obligations for industry in the AML/CTF Act.
Solicitors will be regulated for their new designated services introduced in Schedule 3 of the Bill under the amended AML/CTF Act.

8. **AUSTRAC information-gathering powers**
The Bill revises the information gathering powers of AUSTRAC both as AML/CTF regulator and Australia's Financial Intelligence Unit (FIU). These include:
   - a new examination power, to enable AUSTRAC to obtain relevant information needed to make enforcement decisions and obtain evidence to be used in AML/CTF court proceedings
   - a new notice to allow AUSTRAC to request information or documents and support the AUSTRAC CEO to carry out its FIU functions
   - a new 'authorisation to produce' to ensure that co-operative entities are not exposed to undue legal risk by virtue of voluntary cooperation with AUSTRAC, including through the Fintel Alliance

For details of the changes on the Act, you can refer to the following link to the Bill:
https://parlinfo.aph.gov.au/parlInfo/search/display/display.w3p;query=Id:%22legislation/bills/r7243_aspassed/0000%22

If you want to learn more in implementing control measures in AML processes, please contact AA&T Consulting at advisory@aathk.com.

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Appendix 2: A brief history of Australia's AML/CFT regime

The Anti-Money Laundering and Counter-Terrorism Financing Act 2006 (the Act)

In 2005, the FATF evaluated Australia's AML/CTF regime, while a domestic review was already underway. These processes led to passage of the Act in 2006.

The Act was developed in close consultation with industry to design an appropriate, cost-effective framework that would meet the needs of industry, the public and law enforcement. Its implementation was staggered from 2006, with all provisions fully operational from 12 December 2008.

In 2006, the then Minister for Justice issued policy principles under section 213 of the Act. This gave effect to an Australian Government undertaking that the CEO of the Australian Transaction and Reports Analysis Centre (AUSTRAC) was not to take enforcement action unless a reporting entity had not taken reasonable steps towards compliance with its obligations during a 15-month period following commencement of the Act.

The Act significantly expanded the operation and regulatory coverage of Australia's AML/CTF regime. From fewer than 4,000 cash dealers under the Financial Transactions Reports Act 1988 (Cth) (the FTR Act), the regulated population expanded to over 14,040 reporting entities in the financial, remittance, gambling and bullion sectors.

AUSTRAC was also given stronger compliance and enforcement powers to use in supervising the larger regulated population. The FTR Act remains in operation and contains residual reporting obligations for cash dealers. If a service offered by a cash dealer under the FTR Act falls within the definition of a designated service under the Act, the FTR Act obligations do not apply in relation to that service.

The Act is supported by the Anti-Money Laundering and Counter-Terrorism Financing Rules Instrument 2007 (No. 1) (the Rules). The Rules are issued by the AUSTRAC CEO and provide the detail for the broader obligations set out in the Act. The Rules are an enforceable legal instrument, which can be disallowed by Parliament.

The AML/CTF regime aims for a risk-based approach. Reporting entities must identify the level of risk they face to determine the systems they have in place to mitigate those risks. The regime also employs a designated services model, in which regulation applies to businesses carrying out a service listed in section 6 of the Act, rather than to specific business types. If a reporting entity performs a range of services as part of its business, AML/CTF obligations only apply to those services listed in section 6.

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Appendix 3: References for this article:

1. The AML/CFT Amendment Bill 2024:
https://parlinfo.aph.gov.au/parlInfo/search/display/display.w3p;query=Id:%22legislation/bills/r7243_aspassed/0000%22

2. The AML/CFT Act 2006 (current)
https://www.legislation.gov.au/C2006A00169/latest/text

3. The AML/CFT Amendment Bill 2024 – Explanation Memorandum:

https://parlinfo.aph.gov.au/parlInfo/download/legislation/ems/r7243_ems_d299fdc8-59a6-47a7-b36f-3adf0782996e/upload_pdf/JC014035.pdf;fileType=application%2Fpdf

4. Impact Analysis undertaken by the Attorney-General's Department
https://oia.pmc.gov.au/sites/default/files/posts/2024/09/Impact%20Analysis.pdf

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