



More clarity – and more questions – on Australia’s Anti-Money Laundering and Counter-Terrorism Financing Reforms

Key amendments to Australia’s anti-money laundering and counter-terrorism financing (AML/CTF) laws have now come into effect, alongside new rules providing clarity on those amendments and an inquiry looking into the adequacy and efficacy of Australia’s AML/CTF regime.

What are the key amendments?

The majority of “Phase 1.5” of the reforms to the *Anti-Money Laundering and Counter-Terrorism Financing Act 2006* (Cth) (**AML/CTF Act**), which we examined in the articles available [here](#) and [here](#), came into effect on 17 June 2021.

On the same day, the *Anti-Money Laundering and Counter-Terrorism Financing Rules Instrument 2007 (No. 1)* (Cth) (**AML/CTF Rules**) was amended, providing further detail on those reforms. A table setting out the key amendments to the AML/CTF Act and AML/CTF Rules is below.

Issue	Amendment to the AML/CTF Act	Amendment to the AML/CTF Rules
Customer due diligence arrangements	<p>Reporting entities are now permitted to rely on customer due diligence carried out by another person in two scenarios:</p> <ul style="list-style-type: none"> – Scenario 1: The reporting entity (i) has entered into a written arrangement with that other person, and (ii) carries out regular assessments to maintain reasonable grounds to believe that the other person has the systems and procedures in place to meet the customer due diligence requirements set out in the AML/CTF Rules. This provides the reporting entity with safe harbour from isolated breaches of those customer due diligence requirements committed by the other person. – Scenario 2: The reporting entity has reasonable grounds to believe that it is appropriate to rely on that other person’s customer due diligence procedures, and that other person has met the customer due diligence requirements set out in the AML/CTF Rules. 	<p>Scenarios 1 and 2 only apply if the other person is either a reporting entity under the AML/CTF Act, or a foreign entity regulated by laws of a foreign country that give effect to the Financial Action Task Force’s recommendations on customer due diligence and record keeping.</p> <p>Furthermore, in order for Scenario 1 to apply, the reporting entity must carry out its regular assessments at least every two years, or more frequently having regard to the money laundering, terrorism financing, and other serious crime risks that it faces.</p> <p>Scenario 2 requires, among other things, that the reporting entity have reasonable grounds to believe that the other person’s know-your-customer information will be made available to the reporting entity either immediately under an agreement, or as soon as practicable and within seven days following a written request. This will be deemed to be the case where the other person is a member of the same corporate group or designated business group, and both of them have applied and implemented a joint AML/CTF program or other group-wide measures relating to customer due diligence and record keeping.</p>
Correspondent banking	<p>Financial institutions are now prohibited from entering into, or continuing in, a correspondent banking relationship with another financial institution that is a (i) shell bank (ie a bank that does not have a physical presence in any country), (ii) financial institution with a correspondent banking relationship with a shell bank, or (iii) financial institution that permits its accounts to be used by a shell bank.</p> <p>In addition, financial institutions are now required to carry out due diligence assessments of all new and ongoing correspondent banking relationships that involve a vostro account. Following that due diligence assessment, a senior officer of the financial institution must also determine whether to approve entering into or continuing that correspondent banking relationship.</p>	<p>The AML/CTF Rules set out numerous factors that the financial institution must take into account when conducting a due diligence assessment of the other financial institution, including ownership, control and management structures, size and countries of operation, and the adequacy and effectiveness of its AML/CTF systems and controls.</p> <p>Due diligence assessments must be undertaken of correspondent banking relationships at least every two years or more frequently, having regard to the money laundering, terrorism financing, and other serious crime risks of the correspondent banking relationship.</p>
Timing of customer due diligence	<p>Reporting entities are now explicitly prohibited from commencing provision of a designated service if the applicable customer due diligence procedures have not been carried out, subject to certain exceptions.</p>	<p>–</p>
Tipping off	<p>The exceptions to the offence of tipping off have now been expanded and simplified. Reporting entities are now permitted to share suspicious information in additional circumstances, including with a person auditing or reviewing their AML/CTF program, and members of the same corporate group or designated business group for the purposes of informing them of the risks of dealing with a specific person.</p>	<p>–</p>

Businesses should ensure that their AML/CTF programs comply with these new requirements in the AML/CTF Act and Rules, and consider their ability to take advantage of the time and cost savings made available by the amendments to customer due diligence arrangements.

What next?

These amendments to the AML/CTF regime simplify and strengthen numerous procedures and requirements, but do not take the step of expanding its coverage to designated non-financial business and professional sectors such as real estate agents, accountants, and lawyers. That step is expected in “Phase 2” of the AML/CTF reforms which the Commonwealth Government foreshadowed in 2016 following the Attorney-General’s Department releasing a report on the statutory review of the AML/CTF Act (**Statutory Review**).

Five years on, legislation to implement Phase 2 has yet to be tabled. However, some momentum may be beginning to build. On 23 June 2021, the Australian Senate referred an inquiry to the Legal and Constitutional Affairs References Committee into the adequacy and efficacy of Australia’s AML/CTF regime. Its terms of reference include the Commonwealth Government’s response to the Statutory Review and those “Phase 2” reforms. Submissions to that committee are due on 27 August 2021, and the committee is expected to report by 2 December 2021.

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