



COMBATING MONEY LAUNDERING & TERRORISM FINANCING

Is tranche two on Australia's AML/CTF horizon?

It's been more than ten years since the arrival of the Anti-Money Laundering and Counter-Terrorism Financing Act 2006 ("AML/CTF" Act) in Australia. The Act regulates how certain types of businesses manage the risks of money laundering and terrorism financing.

It's becoming likely the next phase of legislation – known as 'tranche two' – that will amend the AML/CTF Act to place obligations on a broader range of businesses may appear in 2019. So, who will be affected by tranche two, and what does this mean for businesses that have previously never had to think about money laundering or terrorism financing risks?



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What is 'tranche two' and who will it affect?

The Australian Government recently concluded a feasibility study into broadening the AML/CTF Act to include a number of additional designated services, known as tranche two.

Tranche two will likely extend the legislation to include "designated non-financial businesses and professions" who, unwittingly or otherwise, can be used to enable the laundering of money or the financing of terrorism.

WHO WILL BE AFFECTED BY TRANCHE TWO?



LAWYERS



CONVEYANCERS



ACCOUNTANTS



TRUST AND COMPANY SERVICES



REAL ESTATE PROFESSIONALS

Below we briefly summarise some of the money laundering and terrorism financing risks faced by certain non-financial businesses and professions.

Designated non-financial businesses and professions

Lawyers, conveyancers, accountants, trust and company service providers

Known as 'gatekeepers', these service providers can be used to disguise money laundering and terrorism financing through the misuse of legitimate financial and corporate services. They have the potential to, intentionally or unintentionally, hide the true ownership or control of funds or assets and can also misrepresent the source of funds or the true purpose of transactions.

Real estate professionals

Often when criminals launder money by purchasing and selling assets, they are unconcerned about whether the transactions themselves are profitable, the object of attaining 'clean' money is worth any losses on the transaction. However, due to the nature of Australian real estate, the criminals investing proceeds of crime into real estate will usually either break even or make a profit. This, coupled with the lack of AML/CTF regulation, provides a tempting mechanism for criminals to launder funds.

High value dealers

It was intended that High value dealers also be captured by tranche two, that is those who (in the course of carrying on a business):

- engage in a transaction that relates to the buying and selling of high-value goods such as jewellery, antiques and collectibles, fine art, jet skis, boats, yachts, luxury motor vehicles and building, bathroom and kitchen supplies, and
- where the value of the transaction is equal to, or exceeds, a nominated threshold (usually \$10,000 cash in one transaction or over several related transactions).

However, the Government announced in the Budget 2018-2019 that it would simply outlaw large cash payments made to businesses for goods and services in the Australian economy from 1 July 2019. The Government intends to consult on the detail of the measure as part of its implementation.

We believe this measure removes the need to capture High Value Dealers as part of tranche two amendments to the AML/CTF Act.

Why the need for this next phase?

The Anti-Money Laundering and Counter-Terrorism Financing Act 2006 currently places obligations to manage the risk of money laundering and terrorism financing on businesses providing certain designated services. This includes financial services, gambling, remittance services and bullion dealing. These types of services are particularly vulnerable to money laundering and terrorism financing.

The rationale behind the implementation of tranche two includes:

- Meeting global expectations in combating money laundering and terrorism financing, particularly the recommendations of the Financial Action Task Force ("FATF").
- Spreading the regulatory burden of combating money laundering and terrorism financing across a broader base.
- Contributing to national security.

When will tranche two be implemented?

There is currently no fixed date for the implementation of tranche two, but it is expected to be gradual due to the perceived regulatory impact. When Australia's AML/CTF Act was introduced, compliance with obligations was phased in over a period of up to three years. New Zealand recently passed amendments to its Anti-Money Laundering and Countering Financing of Terrorism Act which may provide insight as to how Australian legislators will approach tranche two. The New Zealand government implemented the following timetable:

- Lawyers and conveyancers by July 2018
- Accountants by October 2018
- High value dealers by July 2019

What are tranche two obligations likely to look like?

During the consultation period, the government asked for comments on potential models for regulation. At a high level, those models included the following requirements for designated non-financial businesses and professions (broadly the same as the current obligations):

- Enrol with AUSTRAC (Australia's financial intelligence agency)
- Undertake customer due diligence
- Undertake ongoing customer due diligence (including enhanced due diligence and implementing a transaction monitoring program)
- Report suspicious matters, international funds transfer instructions and threshold transactions
- Implement and maintain an AML/CTF program including:
 - a Money Laundering/Terrorism Financing risk assessment
 - approval and ongoing oversight by boards (where appropriate) and senior management
 - appointment of an AML/CTF compliance officer
 - regular independent review of the program
 - an employee due diligence program
 - an AML/CTF risk awareness training program for employees
 - policies and procedures for the reporting entity to respond to and apply feedback from the AML/CTF regulator
 - systems and controls to ensure the entity complies with its AML/CTF reporting obligations

- customer due diligence and ongoing due diligence procedures.
- Retain relevant records



...affected businesses should start thinking now about how to minimise the compliance burden while effectively managing their money laundering and terrorism financing risks.



What should impacted businesses do now to prepare for the potential changes?

Although it is expected the new obligations will be phased in over time, affected businesses should start thinking now about how to minimise the compliance burden while effectively managing their money laundering and terrorism financing risks.

The Australian AML/CTF regime requires a risk-based approach, and a detailed money laundering/terrorism financing risk

assessment will serve a business well in terms of tailoring an appropriate approach to compliance that minimises the financial and operational impact. A good starting point is to understand and document the inherent money laundering/terrorism financing risks present in:

- Your customer base and the nature of your business relationships
- The products and / or services you offer
- Your delivery channels or servicing methods
- The countries / geographies you, or your customers or suppliers, operate in or facilitate transactions through
- Other potential risk factors including:
 - Stability of your customer base
 - Extent to which you use third party providers
 - Acquisitions / mergers

For those businesses that have never previously considered money laundering or terrorism financing risks, seeking specialist advice will be critical.

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