



Australian Government  

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Australian Transaction Reports  
and Analysis Centre

## **Information from AUSTRAC about the Anti-Money Laundering and Counter-Terrorism Financing Reporting Obligations of Legal Practitioners**

May 2011

### **Background**

The Australian Transaction Reports and Analysis Centre (AUSTRAC) is Australia's anti-money laundering and counter-terrorism (AML/CTF) financing regulator and financial intelligence unit.

AUSTRAC's purpose is to protect the integrity of Australia's financial system and to contribute to the administration of justice through its expertise in countering money laundering and the financing of terrorism.

Australia's AML/CTF regime is established under the *Financial Transaction Reports Act 1988* (FTR Act) and the *Anti-Money Laundering and Counter-Terrorism Financing Act 2006* (AML/CTF Act).

Some solicitors have reporting and/or other obligations under one or other of these Acts.

### **Reporting obligations under the FTR Act**

Under section 15A of the FTR Act, solicitors, solicitor corporations and partnerships of solicitors have obligations to provide significant cash transaction reports (SCTRs) to AUSTRAC.

The reporting obligation under section 15A is triggered if a significant cash transaction is entered into by or on behalf of a solicitor in the course of practising as a solicitor. A 'significant cash transaction' is defined as meaning a cash transaction involving the transfer of currency equivalent to AUD10,000 or more.

'Currency' is defined in section 3 of the FTR Act as the coin and paper money of Australia or of a foreign country that is designated as legal tender; and circulates as, and is customarily used and accepted as, a medium of exchange in the country of issue.

In the case of Australian currency, a SCTR must be made to AUSTRAC within 15 days after the end of the day on which the transaction took place. Reports relating to foreign currency transactions must be made to AUSTRAC by the end of the day after the transaction took place.<sup>1</sup>

Further information on the lodgement of SCTRs by solicitors can be found in the AUSTRAC Guideline No.6 at: <http://www.austrac.gov.au/guidelines.html>.

This obligation for solicitors to submit SCTRs applies unless the relevant transaction took place after the commencement, on 12 December 2008, of Division 1 of Part 3 of the AML/CTF Act and involves the provision of a 'designated service', as defined in that Act.

## **Reporting obligations under the AML/CTF Act**

Under the AML/CTF Act, persons who provide designated services become 'reporting entities' and are subject to a range of obligations.

Designated services cover a wide range of business activities and are listed in section 6 of the AML/CTF Act. The concept of designated services is central to the Act and is one of its main distinguishing features when compared with the FTR Act. The AML/CTF Act focuses on what service is being provided, whereas the FTR Act focuses on all services provided by a defined category of business.

Services provided by solicitors which may constitute designated services under section 6 include loans (Items 6 and 7 of Table 1) or the provision of certain services as the holder of an Australian financial services licence (Item 54 of Table 1).

Solicitors who provide designated services under the AML/CTF Act are required to lodge reports with AUSTRAC in relation to:

- threshold transactions; and
- suspicious matters.

### **Threshold transaction reports (TTR)**

A TTR must be submitted if a solicitor provides a designated service to a customer which involves the transfer of physical currency or e-currency<sup>2</sup> greater than AUD10,000 or foreign currency equivalent. 'Physical currency' is defined in section 5 of the AML/CTF Act as the coin and printed money of Australia or of a

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<sup>1</sup> Reference should be made to the *Acts Interpretation Act 1901* (Cth) in respect to the statutory rules for the reckoning of time.

<sup>2</sup> E-currencies (known as 'e-money', 'digital currency' or 'digital metals') are internet-based, electronic means of exchange which allow for transactions in other major currencies, the purchase of goods and services from vendors holding corresponding e-currency accounts, and the transfer of money.

foreign country that is designated as legal tender; and circulates as, and is customarily used and accepted as, a medium of exchange in the country of issue.

Submission of a TTR must take place within 10 business days of the threshold transaction taking place.<sup>3</sup>

### **Suspicious matters reports (SMR)**

An SMR must be submitted to AUSTRAC if at any time while dealing with a customer (from the enquiry stage to the provision of a designated service or later) the solicitor suspects on reasonable grounds that:

- the customer (or an agent of that customer) is not who they claim to be; or
- the provision (or prospective provision) of that service may be relevant to the investigation of, or prosecution of a person for:
  - evasion (or an attempted evasion) of a taxation law of; or
  - offences against a law of;  
the Commonwealth or of a State or Territory.

An SMR must be submitted to AUSTRAC within three business days of forming the suspicion. If the suspicion relates to the financing of terrorism, the SMR must be submitted within 24 hours of forming the suspicion.<sup>4</sup>

### Legal professional privilege

Section 242 provides that the AML/CTF Act does not affect the law relating to legal professional privilege.

### Exemptions under the AML/CTF Act

Specific exemptions apply under the Act in respect of certain services provided by solicitors, namely:

- international funds transfer instructions; and
- safe deposit box (or similar services) and custodial/depository services.

### International funds transfer instructions

A solicitor who, in the course of carrying on a law practice, accepts or makes available money or property transferred under a designated remittance arrangement is exempt from the reporting requirements of section 45 of the AML/CTF Act relating to international funds transfer instructions (IFTIs). This exemption is effected by Chapter 23 of the *Anti-Money Laundering and Counter-Terrorism Financing Rules Instrument 2007 (No.1)* (AML/CTF Rules) and item 31 of Schedule 5 of the *Crimes Legislation Amendment (Serious and Organised Crime) Act (No. 2) 2010*.

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<sup>3</sup> Reference should be made to the *Acts Interpretation Act 1901* (Cth) in respect to the statutory rules for the reckoning of time.

<sup>4</sup> Ibid.

Solicitors are also not subject to the IFTI reporting obligations which apply to banks, building societies, credit unions and authorised deposit-taking institutions in respect of electronic funds transfer instructions.

#### Safe deposit box (or similar services) and custodial/depository services

Subject to the conditions detailed below, solicitors are also exempt from the operation of the AML/CTF Act in respect of the provision of certain services which would otherwise be caught as 'designated services', namely, 'providing a custodial or depository service' (Item 46 – Table 1) and 'providing a safe deposit box, or similar service' (Item 47 – Table 1).

This exemption is effected by paragraph 40.2 of the AML/CTF Rules which provides that a service is taken to be an 'exempt legal practitioner service' if:

- (1) it is provided in the ordinary course of carrying on a law practice and is a custodial or depository service other than conduct that under section 766E(1) of the *Corporations Act 2001* constitutes providing a custodial or depository service; or
- (2) it is provided in the ordinary course of carrying on a law practice and is a safe deposit box or similar facility other than in relation to physical currency.

#### Other obligations under the AML/CTF Act

In addition to the reporting obligations outlined above, solicitors who provide designated services (and are therefore reporting entities under the AML/CTF Act) have other obligations, including:

- **undertaking customer identification**

Reporting entities are required to collect and verify information about the identity of persons to whom they provide designated services. The systems and processes which are used to collect and verify customer identification information are a matter for the individual reporting entity. Under the AML/CTF Act, each reporting entity is able to determine the customer identification information (and the methods for collecting that information) which it considers are necessary to reduce the risk that its services and products might be used to launder money or finance terrorism.

Further information concerning customer identification can be found at:  
[http://www.austrac.gov.au/customer\\_id.html](http://www.austrac.gov.au/customer_id.html).

- **implementation and maintenance of an AML/CTF program**

Reporting entities are required to implement and maintain an AML/CTF program. These programs enable reporting entities to identify, mitigate and manage the risk of their products or services being used to facilitate money laundering or terrorism financing. AML/CTF programs are risk based and, accordingly, reporting entities can develop and tailor their programs to their individual business operations. This approach recognises that reporting entities are in the best position to assess the risks relating to their customers, products and services

and to allocate resources to address those risks. In developing an AML/CTF program, reporting entities need to consider:

- the risk profile of their customers
- the AML/CTF risk of the designated services provided
- the methods by which designated services are delivered
- risk profiles of any foreign jurisdictions dealt with; and
- risks resulting from the provision of designated services through permanent offices in foreign countries.

Further information about AML/CTF programs can be found at:

[http://www.austrac.gov.au/aml\\_ctf\\_programs.html](http://www.austrac.gov.au/aml_ctf_programs.html).

- **compliance reporting**

Each year reporting entities are required to submit an AML/CTF compliance report for reporting periods specified in the AML/CTF Rules. These annual reports provide AUSTRAC with information about a reporting entity's compliance with their AML/CTF obligations. AUSTRAC encourages reporting entities to submit their compliance reports electronically via AUSTRAC Online.

Further information concerning compliance reporting can be found at:

[http://www.austrac.gov.au/amlctf\\_compliance\\_report.html](http://www.austrac.gov.au/amlctf_compliance_report.html).

### **Submitting reports**

Solicitors who provide designated services can submit reports under the AML/CTF Act, and those who don't provide designated services and remain cash dealers can submit significant cash transaction reports (SCTR-S) under the FTR Act by creating an account with AUSTRAC's web-based electronic reporting system, [AUSTRAC Online](#). The SCTR-S can only be submitted by single form data entry.

For further information about AUSTRAC Online, refer to AUSTRAC's brochure [Getting started with AUSTRAC Online](#).

If you submit a small number of reports under both Acts each year (less than 50 of any report type), then paper reporting forms are also available by contacting the AUSTRAC Help Desk. For SCTR-S under the FTR Act, request the *Solicitor Significant Cash Transaction Form 15A* (SCTR-S).

#### **Contact the AUSTRAC Help Desk**

Telephone: 1300 021 037  
Facsimile: 02 9950 0071  
Website: [www.austrac.gov.au](http://www.austrac.gov.au)  
Email: [help\\_desk@austrac.gov.au](mailto:help_desk@austrac.gov.au)

#### **Postal address for AUSTRAC is**

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