

## Australia: Important updates proposed for the AML/CTF Act – new businesses to be regulated

The Australian Government has introduced an amendment bill in Parliament that would reframe AML/CTF program and KYC requirements and extend the AML/CTF regime to new types of entities.

### In brief

On 11 September 2024, the Australian Government released a much-anticipated bill which proposes to extend the anti-money laundering and counter-terrorism financing (**AML/CTF**) regime to real estate professionals, professional service providers including lawyers, accountants and trust and company service providers, and dealers in precious stones and metals (**the tranche two entities**).

### In depth

This bill is called the **Anti-Money Laundering and Counter-Terrorism Financing Amendment Bill 2024 (the Amendment Bill)**. The Amendment Bill further proposes updates in relation to designated business groups, seeks to clarify the responsibilities of a reporting entity's board and AML/CTF compliance officer, provides for updates to AML/CTF programs, and reframes some of the requirements for customer due diligence (**CDD**). It also proposes new designated services relating to digital assets and transfers of value.

The Amendment Bill has progressed rapidly through the House of Representatives, with the third reading of the legislation agreed to on 9 October 2024. The second reading of the Amendment Bill moved in the Senate on 10 October 2024.

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## Extension of the AML/CTF regime to additional services

The Amendment Bill proposes to extend the AML/CTF regime to certain services (not all services) provided by:

- real estate professionals;
- professional services providers (e.g., lawyers, conveyancers, accountants, and trust and company service providers);
- dealers in precious metals and precious stones;
- virtual asset service providers.

The explanatory memorandum (**the Explanatory Memorandum**) to the Amendment Bill notes that it is anticipated that the Australian Transaction Reports and Analysis Centre's (**AUSTRAC**) reporting population will increase from approximately 17,000 to approximately 90,000 entities.

### Real estate services

The proposed designated services in relation to real estate services are as follows:

- brokering the sale, purchase or transfer of real estate on behalf of a buyer, seller, transferee or transferor in the course of carrying on a business;

- selling or transferring real estate in the course of carrying on a business selling real estate, where the sale or transfer is not brokered by an independent real estate agent.

### Dealers in precious metals and stones

The proposed designated services in relation to dealers in precious metals and stones are as follows:

- buying or selling bullion, where the buying or selling is in the course of carrying on a bullion-dealing business;
- buying or selling one or more of the following items in the course of carrying on a business, where the purchase involves the transfer of physical currency or virtual assets (or a combination of physical currency and virtual assets) with a total value of not less than \$10,000, whether the purchase is made in a single transaction or in several transactions that are linked or appear to be linked:
  - a) precious metal;
  - b) precious stones;
  - c) precious products;
  - d) any combination of any 2 or more of the items referred to in paragraphs (a) to (c).

We note that the definition of bullion has been updated in the Amendment Bill. Further, a “precious product” is defined under the Amendment Bill as any of the following that is made up of, containing or having attached to it, any precious metal or precious stone, or both – jewellery, a watch, an object of personal adornment (not otherwise covered by jewellery or a watch), and an article of goldsmiths’ or silversmiths’ wares. The Amendment Bill gives a specific example of a stainless steel watch with rubies set on the watch face, a platinum tie bar or a gold and pearl necklace.

### Professional services

There are a number of proposed designated services relating to professional services under Schedule 3 to the Amendment Bill, and as such we have not set out the full list which can be found here but refer to two specific designated services below.

Notably the following is one such proposed designated service under the Amendment Bill – assisting a person in the planning or execution of a transaction, or otherwise acting for or on behalf of a person in a transaction, to:

- sell real estate; or
- buy real estate; or
- transfer real estate (other than a transfer pursuant to, or resulting from, an order of a court or tribunal);

in the course of carrying on a business.

Another proposed designated service is assisting a person in the planning or execution of a transaction, or otherwise acting for or on behalf of a person in a transaction, to:

- sell a body corporate or legal arrangement; or
- buy a body corporate or legal arrangement; or
- transfer a body corporate or legal arrangement (other than a transfer pursuant to, or resulting from, an order of a court or tribunal);

in the course of carrying on a business, where the person is or will be a beneficial owner of the body corporate or legal arrangement.

### Virtual asset services

The proposed designated services in relation to virtual asset services are:

- providing a virtual asset safekeeping service, where the service is provided in the course of carrying on a business as a virtual asset service provider;
- exchanging, or making arrangements for the exchange of: (a) a virtual asset for money (whether Australian or not); or (b) money (whether Australian or not) for a virtual asset; for a person, in the course of carrying on a business as a virtual asset service provider;

- exchanging, or making arrangements for the exchange of, a virtual asset for another virtual asset (whether or not of the same or a different kind) in the course of carrying on a business as a virtual asset service provider;
- providing a designated service mentioned in another item of this table (i.e., in section 6(2)) in connection with the offer or sale of a virtual asset, where the service is provided in the course of carrying on a business participating in the offer or sale.

The definition of virtual asset is broad, however it is subject to the following carveouts which the Amendment Bill specifies would not constitute virtual assets – including for money and customer loyalty or reward points, amongst other things.

A “virtual asset safekeeping service” is defined under the Amendment Bill as a service in which virtual assets or private keys are controlled or managed for or on behalf of a person (the customer) or another person nominated by the customer under an arrangement between the provider of the service and the customer, or between the provider of the service and another person with whom the customer has an arrangement.

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## Payments and remittance services

Payments service providers and remitters will note that the Amendment Bill proposes to repeal Items 29-32 under the current Anti-Money Laundering and Counter-Terrorism Financing Act 2006 (Cth) (AML/CTF) and replace it with the following designated services:

- in the capacity of ordering institution, accepting an instruction for the transfer of value on behalf of a payer;
- in the capacity of beneficiary institution, in relation to a transfer of value, making the transferred value available to a payee;
- in the capacity of intermediary institution, passing on a transfer message for a transfer of value in a value transfer chain to another intermediary institution or to the beneficiary institution.

The term “transfer of value” has been defined broadly as a transfer of money, virtual assets or other property (but does not include a transfer of physical currency or other tangible property or a transfer of a kind specified in the Anti-Money Laundering and Counter-Terrorism Financing Rules 2007 (Cth) (AML/CTF Rules)).

The terms beneficiary institution, intermediary institution and ordering institution are defined within the Amendment Bill proposals. Subject to the applicable exceptions, an intermediary institution is a person who in the course of carrying on a business, receives and passes on a transfer message for a transfer of value in a value transfer chain (or is specified in the AML/CTF Rules). A ‘transfer message’ for a transfer of value, means a message that contains information relating to the content of the payer’s instruction for the transfer of value, but does not include a message of a kind specified in the AML/CTF Rules. This may capture entities who were not previously regulated under the AML/CTF Act.

Additional obligations are proposed to be applied to ordering institutions, beneficiary institutions and intermediary institutions in relation to a transfer of value. For example, an intermediary institution must take reasonable steps to monitor whether it has received the information specified in the AML/CTF Rules relating to the transfer of value.

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## Other key definitional changes

The Amendment Bill also proposes some key definitional changes which may require entities to revisit the question of whether they are regulated under the AML/CTF Act. This includes updates to the definitions of ‘credit card’, ‘debit card’, ‘derivative’, ‘issue’, ‘loan’, ‘money’, ‘security’, ‘service’ and ‘securities and derivatives’, for example:

- the definition of ‘stored value card’ will be updated to incorporate Chapter 80 of the AML/CTF Rules and reflect key terminology changes, amongst other things;
- the definition of ‘account’ will be updated so that it remains an inclusive definition, but no longer lists account types. The new definition of account states that “‘account’ includes (a) an account which has a nil balance; and (b) an account in relation to which no transactions have been allowed;

- Items 21 and 22 amend the existing definitions of ‘credit card’ and ‘debit card’ in section 5 of the AML/CTF Act. The intention is to clarify the intended meaning of these terms, including where they are used in the amended definition of ‘stored value card’. The Explanatory Memorandum notes that the new definitions are intended to capture ‘digital only’ credit cards and debit cards that do not exist in a physical form;
- the definition of “security” will be amended to refer to the Chapter 7 Corporations Act 2001 (Cth) definition of security as opposed to the section 9 definition. The result is that legal or equitable rights or interests in securities will now be considered securities under the AML/CTF Act;
- the definition of “derivative” is updated to refer to the meaning of “security” under the proposed amendments;
- the definition of “issue” is updated to have the meaning of Chapter 7 (or section 716E) of the Corporations Act, including when used in relation to a security or derivative;
- part of the definition of “loan” currently relies on the definition of goods and services outlined in the Competition and Consumer Act 2010 (Cth) (CCA). However, there are a number of banking, insurance and financial carve outs in the CCA definition of services that are not intended to be carved out of the AML/CTF regime. As such, the reference to the CCA has been removed from the definition of “loan”.

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## AML/CTF Programs

The Amendment Bill proposes to repeal the current Part 7 of the AML/CTF Act, and replace it with a new Part 1A. The general obligations will remove the current prescriptive obligation for AML/CTF programs to be structured with a separate Part A and Part B. Instead, an AML/CTF program will consist of the reporting entity’s ML/TF risk assessment and the reporting entity’s AML/CTF policies. This reflects the common structure found globally, as reflecting the FATF standards and the legislation of comparable jurisdictions.

For the risk assessment, a reporting entity must identify, assess and document the risks that their designated services may be exploited to launder money, or finance either terrorism or the proliferation of weapons. The Amendment Bill further stipulates that a reporting entity must not commence to provide a designated service without a money laundering and terrorism-financing (ML/TF) risk assessment or if its risk assessment is not up to date. Contravening this provision carries a civil penalty.

Part 1A also details the requirement for a reporting entity to develop and maintain policies, procedures, systems and controls that achieve two outcomes. The first outcome is to manage and mitigate the ML/TF risks that the reporting entity may reasonably face in providing its designated services. The second outcome is internal compliance management to ensure the reporting entity complies with the AML/CTF Act, Rules and regulations. The Amendment Bill provides for a non-exhaustive list of what these policies must cover.

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## Governing board and AML/CTF Compliance Officer role

The Amendment Bill sets out the strategic oversight responsibilities of the governing body, which is separate from the responsibilities of the AML/CTF compliance officer and other members of senior management. Under the proposals, the AML/CTF Act will provide that the governing body is responsible for exercising ongoing oversight of the ML/TF risk assessment, the reporting entity’s compliance with its own AML/CTF policies, and compliance with the AML/CTF regime.

The Amendment Bill moves the requirement to have an AML/CTF compliance officer from the AML/CTF Rules to the AML/CTF Act. Under the proposals, the AML/CTF compliance officer must meet a set of criterion including that the AML/CTF compliance officer must be a resident of Australia, be a fit and proper person, and meet any further requirements specified in the AML/CTF Rules.

It is clarified that a reporting entity must designate a compliance officer within 8 days of providing a designated service. Failing to designate an AML/CTF compliance officer within the required time period and failing to notify AUSTRAC of the individual who is the compliance officer both give rise to civil penalties under the Amendment Bill. Similarly, if an AML/CTF compliance officer ceases to be eligible for that role for the reporting entity, the reporting entity will also have 28 days to designate a new compliance officer.

In terms of approvals of the ML/TF risk assessment and its AML/CTF policies, the Amendment Bill provides that updates to either must be approved by a senior manager in the reporting entity. The governing body of the reporting entity must be notified of

approved updates to ensure that it is able to provide effective strategic oversight of the reporting entity's money laundering, terrorism financing and proliferation financing risks and ability to manage and mitigate them.

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## Customer due diligence

Importantly, the Amendment Bill proposes to move a number of customer due diligence requirements including enhanced customer due diligence into the AML/CTF Act.

The Amendment Bill proposes new due diligence requirements. For example, a reporting entity must not commence to provide a designated 21 service to a customer if the reporting entity has not established on reasonable grounds each of the following:

- the identity of the customer;
- the identity of any person on whose behalf the customer is receiving the designated service;
- the identity of any person acting on behalf of the customer and their authority to act;
- if the customer is not an individual - the identity of any 4 beneficial owners of the customer;
- whether the customer, any beneficial owner of the customer, any person on whose behalf the customer is receiving the designated service, or any person acting on behalf of the customer is:
  - a politically exposed person; or
  - a person designated for targeted financial sanctions;
- the nature and purpose of the business relationship or 12 occasional transaction;
- any other matter relating to the customer that is specified in the AML/CTF Rules.

It is important to note here that politically exposed person screening and the identification of beneficial owners must also be undertaken before a designated service is provided.

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## Next steps

If passed as drafted, the amendments will come into force in 2026. We will provide updated alerts as the Bill is reviewed by the Senate as well as when the proposed changes to the AML/CTF Rules are made public.

For any queries about the Amendment Bill, please contact our team.

## Contact Us



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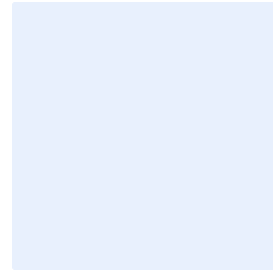
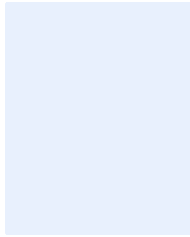
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