# SIGNIFICANT CHANGES ON THE WAY FOR AML REPORTING ENTITIES

Date: 30 October 2024

**Australia Asset Management and Investment Funds Alert**

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The Attorney-General has introduced the *Anti-Money Laundering and Counter-Terrorism Financing Amendment Bill 2024* (the Bill) to address regulatory "gaps" in Australia's existing Anti-Money Laundering and Counter-Terrorism Financing (AML/CTF) regime. The Bill is designed to make significant changes to the existing regime to align Australia with other jurisdictions and the international standards set by the global financial watchdog, the Financial Action Task Force (FATF).

If this Bill is passed, most amendments will have a commencement date of 31 March 2026.

Amongst other things, the Bill contains some significant changes for current reporting entities and also extends AML/CTF obligations to a significant new class of "Tranche Two entities" who will need to comply with the AML/CTF regime for the first time.

## CURRENT REPORTING ENTITIES

### Changes to AML/CTF Program Requirements

Reporting entities will be required to prepare one single AML/CTF program which is to be based on a formal money laundering and terrorist financing (ML/TF) risk assessment. Currently, Part A of an AML/CTF program focused on the identification, management, and mitigation of ML/TF risks, and Part B dealt with customer identification and verification procedures. From March 2026, an AML/CTF program will need to consist of the reporting entity's ML/TF risk assessment together with "AML/CTF policies" which outline how the business will respond to and mitigate the ML/TF risk that has been identified. The AML/CTF policies must be appropriate to the size, nature, and complexity of the reporting entity's business.

Reporting entities will have an express obligation to conduct an ML/TF risk assessment when providing designated services and must have regard to:

- The kind of services being provided;
- The kinds of customers being serviced;
- How the services are being delivered;
- The countries in which the entity does business; and
- Risk assessments the Australian Transaction Reports and Analysis Centre (AUSTRAC) has published about the industry in which the reporting entity operates.

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Reporting entities will be obliged to designate an AML/CTF compliance officer and a senior manager responsible for approving any change to ML/TF risk assessment or AML/CTF policies. The compliance officer must have sufficient authority, independence, and access to information to ensure they can perform their functions effectively. Beyond this, they must also be a fit and proper person.

Reporting entities will need to have a modified framework for Customer Due Diligence (CDD), which involves:

- Identifying and verifying the identity of their customer and of certain associated persons; and
- Understanding the ML/TF risks associated with providing designated services to the customer and taking appropriate steps to mitigate and manage these risks.

The Bill clarifies the requirement to conduct ongoing CDD proportionate to the ML/TF risk associated with each customer and the designated services. Reporting entities are expected to implement these measures not only during the course of a business relationship but also for occasional transactions involving designated services.

### *Introduction of the 'Reporting Groups' Concept*

New concepts of “business group” and “reporting group” will replace the existing “designated business group” (DBG) concept. Unlike DBGs, which consist solely of reporting entities, membership of reporting groups can be extended to related nonreporting entities to facilitate information sharing within the reporting group for CDD and risk management. This will also allow members (including nonreporting entities) within a reporting group to fulfil AML/CTF obligations on behalf of other members of the group.

Reporting groups will be required to have a “lead entity” responsible for:

- Assessing ML/TF risk across the group and its members;
- Developing and applying a group-wide AML/CTF program; and
- Ensuring all group members are compliant with the group-wide AML/CTF program.

The “business group” concept will automatically include traditional corporate group arrangements, including those that are not reporting entities. Whereas businesses in noncorporate structures will have the option to form a “reporting group” to effectively manage the compliance burden of the AML/CTF regime.

## IMPACT ON PROFESSIONAL SERVICES

The Bill also will extend Australia's AML/CTF regime to “Tranche-two” entities for the first time. These entities include:

- Professional service providers (PSPs) that assist clients with certain types of transactions. These PSPs include lawyers, accountants, consultants, trust and company service providers, financial advisors, and business brokers. In summary, PSPs providing the following services will be in-scope of the new AML/CTF regime:
  - Conveyancing services (e.g. assisting in real property transactions and conducting due diligence for clients);

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- Corporate advisory (e.g. advising on mergers and acquisitions transactions and seeking Foreign Investment Review Board (FIRB) approvals);
- Trust account services (e.g. holding money and controlling disbursements for a client);
- Advising on capital raisings (e.g. performing service in equity and debt financing transactions);
- Selling shelf companies (including registering such companies);
- Advising on business transactions (e.g. drafting and reviewing trust deeds);
- Acting as a director (including being appointed a nominee director);
- Acting as a nominee shareholder (e.g. for exercising voting rights); and
- Providing registered office services (e.g. for foreign entities seeking registered office services for incorporating an entity in Australia).

- Real estate professionals when brokering the sale, purchase, or transfer of real estate in the course of carrying on a business.
- Dealers in precious metals and stones in the course of carrying on a business.

## IMPACT ON DIGITAL ASSET SERVICES

The new AML/CTF regime will regulate all aspects of services to effectively address the sector's risk. A virtual asset is defined as a digital representation of value that can be used as a medium of exchange, a store of economic value, a unit of account, or an investment. These assets are not issued by or under the authority of any government body and can be transferred, stored, or traded electronically. Although there are current designated services that cover exchanges of virtual assets and fiat currency, the Bill introduces the following additional designated services into the AML/CTF Act:

- Exchanging, or making arrangements for the exchanging of a virtual asset for another virtual asset (regardless of whether or not it is of the same kind);
- Safekeeping or administration of virtual assets; and
- Providing designated services mentioned in table 1, Section 6 of the AML/CTF Act in connection with the offer or sale of virtual assets.

These designated services will apply to “virtual asset service providers” (VASP) in the course of carrying on their businesses. This also includes those offering specific financial services related to virtual assets.

The two key changes for VASPs are that:

- The Bill will introduce Travel Rule, which requires that certain additional information about the payer and payee must be transmitted with a transfer of virtual assets, property and money; and
- AML obligation will apply to crypto-crypto transaction, not just those between fiat currency and cryptocurrency, as is currently the case.

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## CHANGES TO REMITTANCE SERVICES

In line with the FATF recommendations, the Bill will significantly reform the remittance services framework. It will remove the distinction between financial institutions and remittance service providers and introduce a "transfer of value" concept, which applies to the transfer of money, virtual assets, or other property.

The concept of a "value transfer chain" will be defined based on the participants in it, which include:

- *Ordering institution*—the person accepting an instruction to transfer value on behalf of the payer;
- *Beneficiary institution*—the person making the transferred value available to the payee; and
- *Intermediary institution*—a person taking an active role in receiving and passing on value between the above two.

## CONCLUSION

K&L Gates has extensive experience advising reporting entities on their AML/CTF obligations. This includes reviewing their AML/CTF programs, CDD and ongoing customer due diligence requirements, reporting obligations, and engagement with AUSTRAC.

Recently, AUSTRAC has been proactive and effective in enforcing compliance, successfully addressing noncompliance across various sectors and resulting in billions of dollars in penalties. With its global platform, K&L Gates is well-equipped to address local and cross border AML/CTF issues that may arise from these changes. Although the start date for the new requirements is still a while away, reporting entities—especially those facing AML/CTF obligations for the first time—should engage with their stakeholders and familiarize themselves with the new requirements as soon as possible.

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