

Australia moves – incrementally – towards AML/CTF compliance

Australia has implemented “Phase 1.5” in its anti-money laundering and counter-terrorism reforms. However, Australia’s long-awaited and much-debated “second tranche” of reforms remains out of grasp.

More than a year after it was first introduced into Parliament, the **Anti-Money Laundering and Counter-Terrorism Financing and Other Legislation Amendment Act 2020 (Cth) (Amendment Act)** was passed by both Houses of Parliament on 10 December 2020 without amendment, and received royal assent on 17 December 2020.

The Amendment Act implements incremental reform, most relevantly to reporting entities, in the areas of customer due diligence and correspondent banking relationships. Our earlier article on the Amendment Act’s introduction into Parliament, available [here](#), provides an overview of its key provisions.

The Amendment Act was introduced in response to the Financial Action Task Force’s (**FATF**) highly critical report on Australia’s anti-money laundering and counter-terrorism

financing (**AML/CTF**) legislative framework in 2015. The FATF’s criticisms included, among other things, that the **AML/CTF Act 2006 (Cth) (AML/CTF Act)** did not extend to designated non-financial businesses and professional sectors (including real estate agents, accountants, lawyers, precious stones dealers, and trust and company service providers).

The Amendment Act does not take the step of extending the AML/CTF Act to these sectors. While the Australian Greens party had proposed an amendment to that effect, neither the governing Liberal Party nor the Labor Party opposition supported that amendment. As a result, the Amendment Act has been described as “Phase 1.5” in Australia’s AML/CTF reforms, and addresses some – but not all – of the deficiencies identified by the FATF.



While the Amendment Act came into force upon receiving royal assent, the provisions substantially amending the AML/CTF Act and other related legislation are expected to commence in a staggered approach, as follows:

Provision	Summary	Commencement Date
Customer due diligence arrangements	Reporting entities will be permitted to rely on customer due diligence carried out by another person in certain circumstances.	The earlier of: (i) 18 June 2021 (six months and one day after the Amendment Act received royal assent); and (ii) a day to be fixed by proclamation.
Timing of customer due diligence	Reporting entities will be explicitly prohibited from commencing to provide a designated service if they have not carried out customer due diligence, except in certain circumstances.	
Correspondent banking	Reporting entities will be prohibited from entering into, or continuing in, a correspondent banking relationship with another financial institution that permits its accounts to be used by a shell bank. Reporting entities will also be required to carry out a due diligence assessment before entering into a correspondent banking relationship with another financial institution that will involve a vostro account.	
Tipping off	The exceptions to the offence of tipping off will be expanded.	
Secrecy and access	AUSTRAC's ability to share information with Commonwealth, State, and Territory agencies, governments of foreign countries, and foreign agencies will be expanded.	
Reports about cross-border movements of monetary instruments	A single reporting requirement for the cross-border movement of monetary instruments (including traveller's cheques) will be created.	The earlier of: (i) 18 June 2022 (18 months and one day after the Amendment Act received royal assent); and (ii) a day to be fixed by proclamation.

With civil penalty provisions under the AML/CTF Act attracting a fine of up to AUD22.2 million,¹ and the significant financial settlements that AUSTRAC has reached with reporting entities in Australia in recent years, businesses should take this opportunity to closely review their AML/CTF programs for compliance with the AML/CTF Act and the Amendment Act, while also considering taking advantage of the time and cost savings made available by the forthcoming changes to customer due diligence requirements.

¹ The maximum fine increased from AUD21m to AUD22.2m on 1 July 2020 following the Attorney-General's notice of indexation to the penalty unit amount in accordance with the Crimes Act 1914 (Cth) s 4AA(1A).

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