



Australian Government

Australian Government response to the
Senate Legal and Constitutional Affairs Legislation
Committee report:

Anti-Money Laundering and Counter-Terrorism Financing
Amendment Bill 2024 [Provisions]

JANUARY 2025

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Introduction

The Australian Government thanks the Senate Legal and Constitutional Affairs Legislation Committee (the Committee) for its report, *Anti-Money Laundering and Counter-Terrorism Financing Amendment Bill 2024 [Provisions]*, tabled on 13 November 2024. The Government would like to acknowledge the contributions that organisations made in preparing written submissions to the Committee's inquiry.

The Anti-Money Laundering and Counter-Terrorism Financing Amendment Bill 2024 (the AML/CTF Bill) passed both Houses of Parliament on 29 November 2024.

The AML/CTF Bill will strengthen the capacity of Australia's anti-money laundering and counter-terrorism financing AML/CTF regime to prevent criminals from hiding their illicit profits and funding illegal activities. The AML/CTF Bill will also enhance measures to stop funds from falling into the hands of terrorists and disrupt the activities of authoritarian and corrupt regimes. The AML/CTF Bill will achieve this by:

- expanding the regime to include certain high-risk services provided by legal professionals, accountants, real estate professionals, and dealers in precious stones and metals (also known as tranche two entities)
- simplifying the regime to minimise regulatory burden on businesses, making it easier for them to meet their obligations, and
- modernising the regime to ensure it keeps pace with changing technology exploited by criminals.

The Government is also pleased to provide the following response to the Committee's and Senator Scarr's recommendations.

Committee's Recommendations

Recommendation 1:

The committee recommends that the bill be amended to move the commencement of the 'tipping off' offence to 31 March 2025.

The Government **supports** this recommendation.

The Bill, as passed by the Parliament, includes an amendment that changes the commencement of the tipping off offence to 31 March 2025.

Recommendation 2:

The committee recommends that the bill be amended to include a note that reflects the policy intent for the AML/CTF regime to not capture barristers acting on the instructions of a solicitor.

The Government **supports** this recommendation.

The Bill, as passed by the Parliament, includes an amendment that clarifies and puts beyond doubt the application of the AML/CTF regime to barristers. The amendment clarifies that a service is not a designated service if the service is provided by a person in the course of legal practice as a barrister on the instructions of a solicitor, if the instructions are given in connection with the provision of a designated service.

Recommendation 3:

The committee recommends the bill be amended to ensure entities providing custodial, depository or safe deposit box services without associated transaction elements are not unintentionally captured by the AML/CTF regime.

The Government **supports** this recommendation.

The Bill, as passed by the Parliament, includes an amendment that introduces general rule-making powers for the AML/CTF Rules to specify activities that are exempt from item 46 and item 47 of table 1 of the *Anti-Money Laundering and Counter-Terrorism Financing Act 2006* (the AML/CTF Act) respectively.

Recommendation 4:

The committee recommends that the bill be amended to ensure uniform exemptions for item 54 entities from governing body requirements.

The Government **supports** this recommendation.

The Bill, as passed by the Parliament, includes an amendment that exempts holders of an Australian Financial Services Licence that only provide designated services at item 54 of table 1 of the AML/CTF Act from the requirement at new subsection 26P(2) to notify the governing body of changes to the reporting entity's ML/TF risk assessment. This will ensure a uniform exemption for those reporting entities that provide solely the item 54 designated service.

Recommendation 5:

The committee recommends that the bill be amended to move the criteria for ordering institutions and beneficiary institutions to the AML/CTF Rules to increase flexibility and allow for further consultation with industry.

The Government **supports** this recommendation.

The Bill, as passed by the Parliament, includes an amendment that moves the criteria that constitute the definitions of ordering and beneficiary institutions to the AML/CTF Rules. This will allow further detailed consultation with industry, and flexibility to accommodate future changes to technology and the Financial Action Task Force (FATF) Standards.

Recommendation 6:

The committee recommends that the bill be amended to ensure that where a civil penalty is being considered, there is a clear connection to the customer that should have been subject to customer due diligence, by amending s28 and s30 to read 'the customer' instead of 'a customer'.

The Government **supports** this recommendation.

The Bill, as passed by the Parliament, includes an amendment that updates the relevant provisions to read 'the customer'. This creates a clearer connection between the civil penalty provisions and the customer that should have been subject to customer due diligence.

Recommendation 7:

The committee recommends the bill be amended to ensure that where a reporting entity has previously provided delayed verification in a defective way, it can provide a designated service to a customer once any non-compliance has been remedied.

The Government **supports** this recommendation.

The Bill, as passed by the Parliament, includes an amendment that clarifies that new section 29 operates as an exemption to the initial customer due diligence obligation in section 28(1).

Recommendation 8:

The committee recommends the bill be passed, subject to the above amendments.

The Government **supports** this recommendation.

The AML/CTF Bill passed both Houses of Parliament on 29 November 2024.

Senator Scarr's Additional Recommendations

Recommendation 1:

It is recommended that the Senate note the inappropriateness of the abbreviated timeline for consideration of the Anti-Money Laundering and Counter-Terrorism Financing Amendment Bill 2024; especially given: concerns with respect to the regulatory cost burden – an estimated \$13.9 billion over ten years

The Government **does not support** this recommendation.

The Government consulted extensively on the reform measures over 2023 and 2024, including seven consultation papers, over 100 engagements with industry and government and received over 270 written submissions. The Bill that was introduced into Parliament implemented a range of considered industry feedback. The response below to Recommendation 2 details the considerable work undertaken by the Government to reduce the regulatory burden on entities.

Recommendation 2:

Before the Bill is passed, the Government must address the cost burden imposed by the legislation, particularly upon small business. The \$13.9 billion cost is a burden far too large for small businesses, a cost which will ultimately be passed onto consumers. The Government must work to eliminate or substantially minimise this cost (especially for small business) or provide adequate compensation/support for implementation. Unnecessary or overly burdensome and costly compliance obligations must be avoided. Reforms should not overlap with existing obligations and regulations. Compliance should be streamlined.

The Government **notes** this recommendation.

The Government has reduced regulatory burden by simplifying and modernising the AML/CTF regime. Tranche two entities will have substantially lower costs (\$2.1 billion less) than if they were regulated under the current regime.

The AML/CTF Bill simplifies the currently prescriptive AML/CTF program and Customer Due Diligence (CDD) requirements with clearer, risk-based and outcomes-focused obligations. This means tranche two entities will have substantially lower regulatory costs (\$2.1 billion less) than if they were regulated under the current regime.

The Government has also committed over \$160 million to enable AUSTRAC to proactively and comprehensively support businesses to understand and meet their AML/CTF obligations. AUSTRAC has commenced detailed engagement with industry on development of the AML/CTF Rules and tailored guidance for industry. It is expected that the development of the AML/CTF Rules will further reduce compliance costs.

For example, AUSTRAC will develop ‘Starter Programs’, which will help small businesses establish AML/CTF programs, one of the major obligations under the AML/CTF regime. Small businesses would pick the Starter Program closest to them, and tweak to fit their circumstances. This will streamline regulatory costs and help reduce the cost burden on small businesses.

Recommendation 3:

It is recommended that the Bill be amended to provide that in making the AML/CTF rules AUSTRAC CEO should consider the need to avoid duplication, promote efficiency and minimise the cost imposed on small business.

The Government **notes** this recommendation.

The AML/CTF Act already requires the AUSTRAC CEO to have regard to the ‘the desirability of ensuring that regulatory considerations are addressed in a way that does not impose unnecessary financial and administrative burdens on reporting entities’ and ‘economic efficiency’ in performing his or her functions.

All amendments to the AML/CTF Rules are made in consultation with relevant government agencies, industry and other stakeholders, and designed to reduce duplication and minimise the cost on small businesses.

Recommendation 4:

It is recommended that the Bill be amended to provide for an open and transparent process in developing AML/CTF rules for tranche 2 entities, including: the publication of exposure drafts and a reasonable opportunity for the making of public submissions.

The Government **notes** this recommendation.

The AML/CTF Act already requires the AUSTRAC CEO, in performing his or her functions, to consult with a range of stakeholders including reporting entities or the representatives of reporting entities, and to consider any comments made in the course of those consultations.

AUSTRAC is undertaking a comprehensive consultation process on the AML/CTF Rules, and will consult an Exposure Draft of the Rules before the end of the 2024.

Recommendation 5:

It is recommended that the Senate carefully monitor the development of the AML/CTF rules, including through the Scrutiny of Delegated Legislation Committee, considering the issues raised through the course of this inquiry.

The Government **notes** this recommendation.

The AML/CTF Rules are subject to the processes set out for legislative instruments in the *Legislation Act 2003* and therefore must be tabled in Parliament for oversight and scrutiny. The AML/CTF Rules are disallowable legislative instruments.

Recommendation 6:

It is recommended that legal practitioners be excluded from the application of the mandatory suspicious matter reporting requirements in the Bill. (As recommended below, Schedule 9 should be the subject of further consideration).

The Government **does not support** this recommendation.

Suspicious matter reports (SMRs) provide critical intelligence to AUSTRAC to help identify potentially illegal activity and assist in the detection and prevention of the flow of illegal funds and serious crimes. Exempting legal practitioners from reporting obligations under the AML/CTF regime would not be compliant with the FATF Standards and fundamentally undermine a key component of the AML/CTF regime.

Recommendation 7:

It is recommended that the Bill be amended to exclude barristers work from the ambit of Designated Services under the Bill.

The Government **partially supports** this recommendation.

The Bill, as passed by the Parliament, includes an amendment that clarifies the application of the new designated services to barristers.

The amendment clarifies that a service is not a designated service if the service is provided by a person in the course of legal practice as a barrister on the instructions of a solicitor, if the instructions are given in connection with the provision of a designated service.

If a barrister is engaged directly by a client, and provides a designated service, they would be regulated by the AML/CTF regime. This aligns with the AML/CTF regime's designated services model, which establishes that susceptibility to money laundering and terrorism financing exploitation lies in specific high-risk services, rather than professions.

Recommendation 8:

It is recommended that the Bill be amended to enable reliance between parties to a transaction which is implemented through an independent system, such as the PEXA Exchange, which connects those parties and enables secure information sharing between those parties to enable more effective and efficient assessment of AML/CTF risks.

The Government **notes** this recommendation.

AUSTRAC intends to consult on options to reduce duplication in real estate transactions as part of the rule-making process.

Recommendation 9:

It is recommended that the Bill be amended to provide that a leasehold interest for a term (excluding options for further terms) of 30 years or less be excluded from the definition of interest in land to accommodate arrangements entered into for long term commercial leases especially in the logistics sphere.

The Government **supports** this recommendation.

The Bill, as passed by the Parliament, includes an amendment that changes the definition of ‘real estate’ to exclude a leasehold interest for a term (excluding options for further terms) of 30 years or less.

Recommendation 10:

It is recommended that the Explanatory Memorandum be amended to explicitly mention exclusion of residential site agreements and land leases (refer to Property Council of Australia submission)

The Government **does not support** this recommendation.

The definition of ‘real estate’ in the AML/CTF Bill includes residential site agreements, which is aligned with the policy intent of capturing services that represent illicit financing risk. This is because the tenants of residential site agreements hold their lease, and the right to occupy the land in perpetuity.

Recommendation 11:

It is recommended that the Explanatory Memorandum be amended to provide clarity with respect to conjunction agreements (refer to the Property Council of Australia submission).

The Government **does not support** this recommendation.

If there are multiple businesses involved in the brokering of sale, purchase or transfer of real estate, both businesses will need to apply measures under their AML/CTF program in respect of the provision of the designated service.

The AML/CTF Act already provides a flexible CDD reliance framework. Under this framework, a reporting entity, such as a property developer, may rely on CDD undertaken by another reporting entity in appropriate circumstances.

Recommendation 12:

It is recommended that Initial Refundable Deposits be explicitly removed from the designated services list for the reason provided by the Property Council of Australia.

The Government **does not support** this recommendation.

The regime does not require real estate professionals to conduct CDD on every potential buyer. The real estate designated services commence when it is reasonably expected that the transaction will proceed, for example, when the buyer's offer has been accepted and the contract to buy or receive the real estate is signed.

Recommendation 13:

It is recommended that the definition of 'qualified accountant' in section 5 of the Act be amended to align with section 88B of the *Corporations Act 2001* and ASIC Corporations (Qualified Accountant) Instrument 2016/786.

The Government **supports** this recommendation.

The Bill, as passed by the Parliament, included an amendment which would add a member of the Institute of Public Accountants into the definition of 'qualified accountant' in section 5 of the AML/CTF Act.

Recommendation 14:

It is recommended that the Bill be amended to exclude restructuring practitioners appointed under Part 5.3B of the Corporations Act 2001 from the proposed designated professional services in Table 6.

The Government **does not support** this recommendation.

The AML/CTF Bill provides an exception to item 7 of new designated service table 6, where a person is appointed as a registered liquidator over an insolvent body corporate.

Restructuring practitioners allow eligible companies to retain control of the assets and affairs of the company with the directors of the company maintaining control of the company's business, property and affairs during a restructure. The restructuring practitioner acts as the company's agent, and could be subject to exploitation.

Phoenixing occurs when a new company is created to continue the business of a company that has been deliberately liquidated to avoid paying its debts, including taxes, creditors and employee entitlements.

Regulators such as the Australian Securities and Investments Commission do not require consideration of money laundering and terrorism financing risks. This means that the

AML/CTF Bill is unable to reference such legislation without extensive consideration, as it would not provide adequate regulatory coverage.

Recommendation 15:

Due to the concerns raised by key stakeholders and by the Scrutiny Committees of Parliament, it is recommended that Schedule 9 be excised from the Bill for the purposes of further consultation.

The Government **does not support** this recommendation.

AUSTRAC's existing information-gathering powers are no longer fit-for-purpose. The expected growth in the regulated population will increase the need for reforms to AUSTRAC's powers to better manage the high money laundering risks associated with newly-regulated sectors.

The need for AUSTRAC to have better tools to respond to these challenges was identified in the recommendations of the *2016 Statutory Review of the Act and Associated Rules and Regulations*.

The changes also ensure AUSTRAC's compliance with FATF obligations, which require financial supervisors to be authorised to compel production of any information relevant to monitoring compliance with the AML/CTF requirements (Recommendation 27).

Recommendation 16:

If the above recommendation is not accepted, then the Bill should be amended to address the following issues:

- the seniority, qualifications and training of any person who is delegated power by the AUSTRAC CEO under Schedule 9;
- alignment of the penalty for the strict liability offences under Schedule 9, including the section 172C(3) offence, with the Commonwealth Guide to Framing Commonwealth Offences;
- the issues raised by the Law Council of Australia with respect to the potential application of the powers to legal practitioners given their ethical obligations; and
- the concerns of the Scrutiny of Bills Committee with respect to the abrogation of the privilege against self-incrimination.

The Government **does not support** this recommendation.

The AML/CTF Bill already provides clarity on these issues, as detailed below.

Examiners

The seniority, qualifications or training of any person who is delegated power by the AUSTRAC CEO to conduct examinations should not be included on the face of the legislation as this would be too prescriptive.

Strict liability offence

Schedule 9 of the AML/CTF Bill provides that persons required to appear for examination in accordance with a notice may be required to take an oath or give an affirmation that the statements made will be true.

It is important that consequences for non-compliance are sufficiently serious to deter serious and organised crime, and to ensure the proper utilisation of powers under Schedule 9 as a whole.

Legal ethical obligations

The AML/CTF Bill provides a clear legal obligation for legal practitioners to comply with the AML/CTF regime. The legislation includes appropriate safeguards in relation to the exercise of any information-gathering or compliance powers, in addition to clear protections for information reasonably assessed as being subject to legal professional privilege.

Abrogation of the privilege against self-incrimination

The abrogation of the privilege against self-incrimination in section 169 ensures information provided in response to a section 167 notice can also be used in criminal proceedings for an offence relevant to the definitions of money laundering, financing of terrorism and proliferation financing in section 5 of the AML/CTF Act.

This is necessary to ensure the effective investigation and prosecution of serious criminal offences that relate to money laundering, financing of terrorism, and proliferation financing.

Recommendation 17:

It is recommended that the Government systematically consider all of the drafting amendments proposed by submitters to this inquiry (not considered elsewhere in these Additional Comments or in the Committee Report) and make all necessary amendments where appropriate to provide clarity and to enhance the operation of the Bill.

The Government **supports** this recommendation in principle.

The Government has passed amendments that respond to stakeholder feedback received through the Committee process. The Attorney-General's Department carefully reviewed and considered all submissions to the inquiry, and also met with key stakeholders to address concerns following the introduction of the AML/CTF Bill.

Recommendation 18:

It is recommended that the Australian government engage with the FATF with respect to the material concerns raised by those impacted by the proposed AML/CTF regime, including small business and the legal profession. These issues should be discussed at the highest levels of the FATF so that the reasonableness and proportionality of recommendations can be assessed. The relevant Committee of the Parliament should examine the engagement of the Government with the FATF in relation to these issues in light of the concerns raised by stakeholders with this inquiry.

The Government **notes** this recommendation.

Australia engages extensively with the FATF, the global financial crime watchdog. The FATF is a 40-member inter-governmental body that sets international standards on financial crime. In total, the FATF and its regional bodies cover over 200 jurisdictions.

Recommendation 19:

It is recommended that the Bill be amended to provide for an independent statutory review of the legislation in 2028.

The Government **does not support** this recommendation.

Australia's Mutual Evaluation in 2026-27 will include independent consideration of the effectiveness of the legislation as at the end of 2026. There will also be interim reporting to the FATF in 2030.

Recommendation 20:

The Bill not be passed in its current form.

The Government **does not support** this recommendation.