Anti-Money Laundering and Counter-Terrorism Financing Amendment Act 2007

No. 52, 2007

An Act to amend the *Anti-Money Laundering and Counter-Terrorism Financing Act 2006*, and for other purposes

Contents

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[*Assented to 12 April 2007*]

The Parliament of Australia enacts:

1 Short title

This Act may be cited as the *Anti-Money Laundering and Counter-Terrorism Financing Amendment Act 2007*.

2 Commencement

(1) Each provision of this Act specified in column 1 of the table commences, or is taken to have commenced, in accordance with column 2 of the table. Any other statement in column 2 has effect according to its terms.

Commencement information

Column 1	Column 2	Column 3
Provision(s)	**Commencement**	**Date/Details**
1. Sections 1 to 3 and anything in this Act not elsewhere covered by this table	The day on which this Act receives the Royal Assent.	12 April 2007
2. Schedule 1, items 1 to 13	The day after this Act receives the Royal Assent.	13 April 2007
3. Schedule 1, item 14	Immediately after the commencement of section 42 of the *Anti-Money Laundering and Counter-Terrorism Financing Act 2006*.	12 December 2008
4. Schedule 1, items 15 to 19	The day after this Act receives the Royal Assent.	13 April 2007
5. Schedule 1, item 20	Immediately after the commencement of section 85 of the *Anti-Money Laundering and Counter-Terrorism Financing Act 2006*.	12 December 2007
6. Schedule 1, items 21 to 57	The day after this Act receives the Royal Assent.	13 April 2007
6A. Schedule 1, item 57A	Immediately after the commencement of item 56 of Schedule 1 to the *Anti-Money Laundering and Counter-Terrorism Financing (Transitional Provisions and Consequential Amendments) Act 2006*.	13 December 2006
6B. Schedule 1, item 58	The day after this Act receives the Royal Assent.	13 April 2007
7. Schedule 1, items 59 to 61	13 December 2006.	13 December 2006
8. Schedule 1, items 62 to 69	The day after this Act receives the Royal Assent.	13 April 2007

Note: This table relates only to the provisions of this Act as originally passed by both Houses of the Parliament and assented to. It will not be expanded to deal with provisions inserted in this Act after assent.

(2) Column 3 of the table contains additional information that is not part of this Act. Information in this column may be added to or edited in any published version of this Act.

3 Schedule(s)

Each Act that is specified in a Schedule to this Act is amended or repealed as set out in the applicable items in the Schedule concerned, and any other item in a Schedule to this Act has effect according to its terms.

Schedule 1—Amendments

Part 1—Amendments

Administrative Decisions (Judicial Review) Act 1977

1 Paragraph (qa) of Schedule 1

After "under", insert "section 176 or 248 of".

Anti-Money Laundering and Counter-Terrorism Financing Act 2006

2 Section 5 (paragraph (a) of the definition of *applicable customer identification procedure*)

After "section 6", insert ", and there is no joint anti-money laundering and counter-terrorism financing program that applies to, and has been adopted by, the reporting entity".

3 Section 5

Insert:

> *ASIS* means the Australian Secret Intelligence Service.

4 Section 5

Insert:

> *ASIS Minister* means the Minister responsible for administering so much of the *Intelligence Services Act 2001* as relates to ASIS.

5 Section 5

Insert:

> *ASIS official* means:
>
> (a) the Director-General of ASIS; or
> (b) a person employed under subsection 33(1) of the *Intelligence Services Act 2001*; or
> (c) a person engaged under subsection 34(1) of the *Intelligence Services Act 2001*.

For the purposes of this Act, a person covered by paragraph (c) is taken to be an employee of ASIS.

6 Section 5 (after paragraph (g) of the definition of *designated agency*)

Insert:

(ga) ASIS; or

7 Subsection 6(2) (cell at table item 18, column headed "Provision of a designated service")

Repeal the cell, substitute:

issuing a debit card that enables the holder of an account to debit the account, where the account provider is:

(a) an ADI; or

(b) a bank; or

(c) a building society; or

(d) a credit union; or

(e) a person specified in the AML/CTF Rules

8 Subsection 6(2) (after table item 18)

Insert:

| 18A | issuing a debit card that enables a signatory to an account (other than the holder of the account) to debit the account, where the account provider is:

(a) an ADI; or

(b) a bank; or

(c) a building society; or

(d) a credit union; or

(e) a person specified in the AML/CTF Rules | the signatory |

9 Subsection 6(2) (cell at table item 19, column headed "Provision of a designated service")

Repeal the cell, substitute:

in the capacity of building society
or credit union, issuing a debit card
that enables the holder of an
account with the building society or
credit union to debit an account
held by the building society or
credit union, where the account
provider of the last-mentioned
account is:

(a) an ADI; or

(b) a bank; or

(c) a person specified in the
     AML/CTF Rules

10 Subsection 6(2) (after table item 19)

Insert:

| 19A | in the capacity of building society or credit union, issuing a debit card that enables a signatory to an account with the building society or credit union (other than the holder of the account with the building society or credit union) to debit an account held by the building society or credit union, where the account provider of the last-mentioned account is:

(a) an ADI; or

(b) a bank; or

(c) a person specified in the AML/CTF Rules | the signatory |

11 Subsection 6(2) (cell at table item 20, column headed "Provision of a designated service")

Repeal the cell, substitute:

in the capacity of trustee or
manager of a trust, issuing a debit
card that enables the holder of a
beneficial interest in the trust to
debit an account held by the trustee
or manager of the trust, where the

account provider is:

(a) an ADI; or

(b) a bank; or

(c) a building society; or

(d) a credit union; or

(e) a person specified in the
AML/CTF Rules

12 Subsection 6(2) (after table item 20)

Insert:

20A	in the capacity of trustee or manager of a trust, issuing a debit card that enables a signatory authorised by the holder of a beneficial interest in the trust to debit an account held by the trustee or manager of the trust, where the account provider is: (a) an ADI; or (b) a bank; or (c) a building society; or (d) a credit union; or (e) a person specified in the AML/CTF Rules	the signatory

13 Subsection 6(2) (after paragraph (b) of the cell at table item 35, column headed "Provision of a designated service")

Insert:

(ba) in the case of an issue of a
security or derivative—the issue
does not consist of the issue by a
government body of a security
of the government body or of an
option to acquire a security of
the government body; and

14 Subsection 42(6)

Repeal the subsection.

15 Subsections 66(4) and (5)

Repeal the subsections.

16 After subsection 67(2)

Insert:

(2A) This Part does not apply to an instruction that arises from the use of a debit card or a credit card at a branch of a financial institution if:

  (a) the number of the card is included in the instruction; and

  (b) the card is not of a kind specified in the AML/CTF Rules; and

  (c) the use does not take place in circumstances of a kind specified in the AML/CTF Rules.

17 After subsection 67(4)

Insert:

Merchant terminals

(4A) This Part does not apply to an instruction given by way of the operation of a merchant terminal if:

  (a) the operation is authorised by a financial institution; and

  (b) the merchant terminal is not of a kind specified in the AML/CTF Rules; and

  (c) the operation does not take place in circumstances of a kind specified in the AML/CTF Rules.

18 Subparagraph 71(b)(v)

Omit "the date and place of birth of the payer", substitute "the payer's date of birth, the country of the payer's birth and the town, city or locality of the payer's birth".

19 At the end of Part 6

Add:

79A Evidentiary certificates

(1) In:

(a) criminal proceedings for an offence against subsection 74(2), (4), (6) or (8); or

(b) section 175 proceedings for a contravention of subsection 74(1);

a certificate signed by the AUSTRAC CEO stating that the defendant's name was not entered on the Register of Providers of Designated Remittance Services is prima facie evidence of the matters in the certificate.

(2) In:

(a) criminal proceedings for an offence against subsection 74(2), (4), (6) or (8); or

(b) section 175 proceedings for a contravention of subsection 74(1);

a certificate signed by the AUSTRAC CEO stating that the defendant's registrable details were not entered on the Register of Providers of Designated Remittance Services is prima facie evidence of the matters in the certificate.

(3) A document purporting to be a certificate mentioned in subsection (1) or (2) is taken to be such a certificate and to have been duly given, unless the contrary is established.

20 Subsection 85(6)

Repeal the subsection.

21 After subsection 123(5)

Insert:

(5A) A person to whom information has been disclosed under subsection (5) must not disclose the information to another person.

22 After subsection 123(8)

Insert:

(8A) A person to whom information has been disclosed under subsection (8) must not disclose the information to another person.

23 Paragraph 123(11)(a)

Omit "or (3)", substitute ", (3), (5A) or (8A)".

23A Paragraph 127(3)(b)

Omit "or 133", substitute ", 133 or 133A".

24 Paragraph 128(3)(a)

Repeal the paragraph, substitute:

    (a) disclose AUSTRAC information to a person for the purposes of, or in connection with:

      (i) court or tribunal proceedings; or

      (ii) proposed or possible court or tribunal proceedings; or

      (iii) obtaining legal advice; or

25 Paragraph 128(6)(a)

Repeal the paragraph, substitute:

    (a) the disclosure is for the purposes of, or in connection with:

      (i) the court or tribunal proceedings; or

      (ii) the proposed or possible court or tribunal proceedings; or

      (iii) obtaining or giving the legal advice;

    as the case may be; or

26 After subsection 128(12)

Insert:

ASIS officials

(12A) The following provisions have effect:

    (a) an ASIS official may disclose AUSTRAC information to an IGIS official for the purposes of, or in connection with, the performance of the IGIS official's duties in relation to ASIS or employees of ASIS;

    (b) an ASIS official may disclose AUSTRAC information to the ASIS Minister if the disclosure is for the purposes of, or in connection with, the performance of the ASIS Minister's responsibilities in relation to ASIS;

    (c) an ASIS official may disclose AUSTRAC information to a Minister who, under section 9A of the *Intelligence Services Act 2001*, is empowered to issue an authorisation in relation to ASIS, if the disclosure is for the purposes of, or in connection with, the exercise of that power.

(12B) Subsection (12A) does not limit the generality of any other provision of this section.

27 At the end of subsection 128(13)

Add:

; (d) an ASIO official may disclose AUSTRAC information to a Minister who, under section 9A of the *Intelligence Services Act 2001*, is empowered to issue an authorisation in relation to ASIS, if the disclosure is for the purposes of, or in connection with, the exercise of that power.

28 After subsection 128(13)

Insert:

(13A) Subsection (13) does not limit the generality of any other provision of this section.

29 After subsection 128(14)

Insert:

(14A) Subsection (14) does not limit the generality of any other provision of this section.

30 Subsections 128(15) and (17)

Omit "that law", substitute "so much of that law as relates to the agency".

31 Paragraph 128(19)(a)

Omit "or employees of ASIO", substitute ", ASIS or employees of ASIO or ASIS".

32 After paragraph 128(19)(b)

Insert:

(ba) disclose AUSTRAC information to the Director-General of ASIS in a draft report under section 21 of the *Inspector-General of Intelligence and Security Act 1986* in relation to ASIS or employees of ASIS; or

33 Paragraph 128(19)(c)

Repeal the paragraph.

34 Paragraph 128(19)(d)

Omit "in a written response to a complainant".

35 Paragraph 128(19)(d)

Omit "or employees of ASIO", substitute ", ASIS or employees of ASIO or ASIS".

36 After paragraph 128(19)(e)

Insert:

> (ea) disclose AUSTRAC information to the Director-General of ASIS in a report, in relation to ASIS or employees of ASIS, under section 25A of the *Inspector-General of Intelligence and Security Act 1986*; or

37 Paragraph 128(19)(f)

Repeal the paragraph.

38 Paragraph 128(19)(g)

Omit "22(4) or section", substitute "section 22 or".

39 At the end of subsection 128(19)

Add:

> ; or (h) disclose AUSTRAC information in a notice under section 12 of the *Inspector-General of Intelligence and Security Act 1986*.

40 At the end of section 128

Add:

> (20) Subsection (19) does not limit the generality of any other provision of this section.

40A At the end of Division 4 of Part 11

Add:

133A When the Director-General of ASIS may communicate AUSTRAC information to a foreign intelligence agency

(1) The Director-General of ASIS may communicate AUSTRAC information to a foreign intelligence agency if the Director-General is satisfied that:

    (a) the foreign intelligence agency has given appropriate undertakings for:

        (i) protecting the confidentiality of the information; and

        (ii) controlling the use that will be made of it; and

        (iii) ensuring that the information will be used only for the purpose for which it is communicated to the foreign country; and

    (b) it is appropriate, in all the circumstances of the case, to do so.

(2) The Director-General of ASIS may, in writing, authorise an ASIS official to access the AUSTRAC information and communicate it to the foreign intelligence agency on the Director-General's behalf.

> Note: For variation and revocation, see subsection 33(3) of the *Acts Interpretation Act 1901*.

41 Subsection 136(4)

Repeal the subsection, substitute:

(4) Strict liability applies to the paragraph (1)(c) element of the offence.

> Note: For *strict liability*, see section 6.1 of the *Criminal Code*.

42 Subsection 137(3)

Repeal the subsection, substitute:

(3) Strict liability applies to the paragraph (1)(c) element of the offence.

> Note: For *strict liability*, see section 6.1 of the *Criminal Code*.

43 Subsection 139(2)

Repeal the subsection, substitute:

(2) Strict liability applies to the paragraph (1)(d) element of the offence.

> Note: For *strict liability*, see section 6.1 of the *Criminal Code*.

44 Subsection 139(4)

Repeal the subsection, substitute:

(4) Strict liability applies to the paragraph (3)(d) element of the offence.

Note: For *strict liability*, see section 6.1 of the *Criminal Code*.

45 Subsection 140(2)

Repeal the subsection, substitute:

(2) Strict liability applies to the paragraph (1)(c) element of the offence.

Note: For *strict liability*, see section 6.1 of the *Criminal Code*.

46 Subsection 140(4)

Repeal the subsection, substitute:

(4) Strict liability applies to the paragraph (3)(c) element of the offence.

Note: For *strict liability*, see section 6.1 of the *Criminal Code*.

47 Subsection 141(2)

Repeal the subsection, substitute:

(2) Strict liability applies to the paragraph (1)(e) element of the offence.

Note: For *strict liability*, see section 6.1 of the *Criminal Code*.

48 Subsection 145(1)

After "staff of AUSTRAC", insert ", or a person whose services are made available to the AUSTRAC CEO under subsection 225(3),".

49 At the end of Division 7 of Part 13

Add:

164A Review of decisions

(1) Applications may be made to the Administrative Appeals Tribunal for review of decisions of the AUSTRAC CEO under section 161.

(2) In this section:

decision has the same meaning as in the *Administrative Appeals Tribunal Act 1975*.

50 At the end of Division 5 of Part 15

Add:

191A Review of decisions

(1) Applications may be made to the Administrative Appeals Tribunal for review of decisions of the AUSTRAC CEO under section 191.

(2) In this section:

decision has the same meaning as in the *Administrative Appeals Tribunal Act 1975*.

51 Subsection 197(5)

Repeal the subsection, substitute:

(5) The AUSTRAC CEO may publish a copy of the undertaking on AUSTRAC's Internet site, but the AUSTRAC CEO must delete from the copy information that the AUSTRAC CEO is satisfied:

   (a) is commercial in confidence; or

   (b) should not be released because it would be against the public interest to do so; or

   (c) consists of personal details of an individual.

(6) If:

   (a) the AUSTRAC CEO publishes a copy of the undertaking on AUSTRAC's Internet site; and

   (b) the copy has information deleted from it;

the copy must include a note stating that information has been deleted.

52 At the end of section 228

Add:

(5) The Minister must cause a copy of each direction under subsection (1) to be tabled in each House of the Parliament within 15 sitting days of that House after giving the direction.

Anti-Money Laundering and Counter-Terrorism Financing (Transitional Provisions and Consequential Amendments) Act 2006

53 Item 43 of Schedule 1

Repeal the item.

Commonwealth Electoral Act 1918

54 Subsection 90B(4) (at the end of the table)

Add:

7	a prescribed person or organisation that, under an arrangement with: (a) a reporting entity; or (b) an agent of a reporting entity; provides information for the purpose of facilitating the carrying out of applicable customer identification procedures under the *Anti-Money Laundering and Counter-Terrorism Financing Act 2006*	a copy of a Roll (or an extract of a Roll)	(a) on request by the person or organisation; and (b) on payment of the fee (if any) payable under subsection (9).

55 Paragraph 90B(9)(b)

Omit "or 5", substitute ", 5, 6 or 7".

56 Before subsection 91A(3)

Insert:

(2E) For information provided under item 7 of the table in subsection 90B(4), the only permitted purpose in relation to a prescribed person or organisation is facilitating the carrying out of an applicable customer identification procedure under the *Anti-Money Laundering and Counter-Terrorism Financing Act 2006*.

57 Subsection 91B(3)

After "item 5", insert ", 6 or 7".

Financial Transaction Reports Act 1988

57A Subsection 3(1) (at the end of paragraph (c) of the definition of *non-reportable cash transaction*)

Add "that occurred after the commencement of Division 3 of Part 3 of the *Anti-Money Laundering and Counter-Terrorism Financing Act 2006*".

58 Subparagraph 7(1)(f)(ii)

Omit "Division 1 of Part 2", substitute "Division 3 of Part 3".

59 Paragraph 28(1)(a)

Omit "Director", substitute "AUSTRAC CEO".

60 Subsection 29(1)

Omit "Director", substitute "AUSTRAC CEO".

61 Subsection 30(1)

Omit "Director", substitute "AUSTRAC CEO".

Inspector-General of Intelligence and Security Act 1986

62 Subsection 22(3)

Repeal the subsection, substitute:

 (3) If the report includes information that was acquired by the Commissioner of Taxation under the provisions of a tax law (within the meaning of section 3E of the *Taxation Administration Act 1953*), the Inspector-General must prepare another version of the report that does not disclose the tax information.

Note: Section 3EC of the *Taxation Administration Act 1953* permits the Inspector-General to disclose the information to the Director-General of Security in the report under subsection (1).

Surveillance Devices Act 2004

63 Subsection 6(1) (paragraph (ca) of the definition of *relevant offence*)

Omit "34,".

64 Subsection 6(1) (paragraph (ca) of the definition of *relevant offence*)

Omit "or 140", substitute ", 140 or 141".

Part 2—Application and transitional provisions

65 Judicial review of decisions made under the *Anti-Money Laundering and Counter-Terrorism Financing Act 2006*

(1) The amendment of paragraph (qa) of Schedule 1 to the *Administrative Decisions (Judicial Review) Act 1977* made by this Schedule applies in relation to a decision made before, at or after the commencement of this item.

(2) If, apart from this subitem, the prescribed period for the purposes of the application of paragraph 11(1)(c) of the *Administrative Decisions (Judicial Review) Act 1977* to a decision made under the *Anti-Money Laundering and Counter-Terrorism Financing Act 2006* before the commencement of this item would end before that commencement, that prescribed period is taken, for those purposes, to be the period:

(a) beginning on the day on which the decision was made; and

(b) ending on the 28th day after the day on which this item commences.

66 Application of amendment—section 71 of the Anti-Money Laundering and Counter-Terrorism Financing Act 2006

The amendment of subparagraph 71(b)(v) of the *Anti-Money Laundering and Counter-Terrorism Financing Act 2006* made by this Schedule applies in relation to an electronic funds transfer instruction given after the commencement of this item.

67 AAT review of decisions made under section 161 of the *Anti-Money Laundering and Counter-Terrorism Financing Act 2006*

(1) Section 164A of the *Anti-Money Laundering and Counter-Terrorism Financing Act 2006* applies in relation to a decision made under section 161 of that Act before, at or after the commencement of this item.

(2) If, apart from this subitem, the prescribed time for the purposes of the application of paragraph 29(1)(d) of the *Administrative Appeals Tribunal Act 1975* to a decision made under section 161 of the *Anti-Money Laundering and Counter-Terrorism Financing Act 2006*

before the commencement of this item would end before that commencement, that prescribed time is taken, for those purposes, to be the period:

> (a) beginning on the day on which the decision is made; and
>
> (b) ending on the 28th day after the day on which this item commences.

68 AAT review of decisions made under section 191 of the *Anti-Money Laundering and Counter-Terrorism Financing Act 2006*

(1) Section 191A of the *Anti-Money Laundering and Counter-Terrorism Financing Act 2006* applies in relation to a decision made under section 191 of that Act before, at or after the commencement of this item.

(2) If, apart from this subitem, the prescribed time for the purposes of the application of paragraph 29(1)(d) of the *Administrative Appeals Tribunal Act 1975* to a decision made under section 191 of the *Anti-Money Laundering and Counter-Terrorism Financing Act 2006* before the commencement of this item would end before that commencement, that prescribed time is taken, for those purposes, to be the period:

> (a) beginning on the day on which the decision is made; and
>
> (b) ending on the 28th day after the day on which this item commences.

69 Application of amendment—section 22 of the *Inspector-General of Intelligence and Security Act 1986*

The amendment of section 22 of the *Inspector-General of Intelligence and Security Act 1986* made by this Schedule applies in relation to a report prepared under subsection 22(1) of that Act after the commencement of this item.

(18/07)