



Anti-Money Laundering and Counter-Terrorism Financing Amendment Act 2024

No. 110, 2024

**An Act to amend the *Anti-Money Laundering and
Counter-Terrorism Financing Act 2006* and repeal
the *Financial Transaction Reports Act 1988*, and for
related purposes**

Note: An electronic version of this Act is available on the Federal Register of Legislation
(<https://www.legislation.gov.au/>)

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No. 110, 2024

An Act to amend the *Anti-Money Laundering and Counter-Terrorism Financing Act 2006* and repeal the *Financial Transaction Reports Act 1988*, and for related purposes

[Assented to 10 December 2024]

The Parliament of Australia enacts:

1 Short title

This Act is the *Anti-Money Laundering and Counter-Terrorism Financing Amendment Act 2024*.

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
Provisions	Commencement	Date/Details
1. Sections 1 to 3 and anything in this Act not elsewhere covered by this table	The day this Act receives the Royal Assent.	10 December 2024
2. Schedules 1, 2 and 3	31 March 2026.	31 March 2026
3. Schedule 4	1 July 2026.	1 July 2026
3A. Schedule 5, item 1	31 March 2026.	31 March 2026
3B. Schedule 5, item 2	31 March 2025.	31 March 2025
4. Schedule 5, Part 1, Division 2	31 March 2026.	31 March 2026
5. Schedule 5, Part 2	The later of: (a) the commencement of the provisions covered by table item 3B; and (b) immediately after the commencement of item 94 of Schedule 1 to the <i>Intelligence Services Legislation Amendment Act 2024</i> . However, the provisions do not commence at all if the event mentioned in paragraph (b) does not occur.	

Commencement information		
Column 1	Column 2	Column 3
Provisions	Commencement	Date/Details
6. Schedule 6, Part 1	31 March 2026.	31 March 2026
7. Schedule 6, Part 2	The later of: (a) the commencement of the provisions covered by table item 6; and (b) immediately after the commencement of Schedule 2 to the <i>Crimes and Other Legislation Amendment (Omnibus No. 1) Act 2024</i> . However, the provisions do not commence at all if the event mentioned in paragraph (b) does not occur.	31 March 2026 (paragraph (a) applies)
8. Schedule 7	1 July 2026.	1 July 2026
9. Schedule 8	31 March 2026.	31 March 2026
10. Schedule 9, Parts 1 to 3	The 28th day after this Act receives the Royal Assent.	7 January 2025
11. Schedule 9, Part 4	The later of: (a) the commencement of the provisions covered by table item 10; and (b) immediately after the commencement of item 94 of Schedule 1 to the <i>Intelligence Services Legislation Amendment Act 2024</i> . However, the provisions do not commence at all if the provisions covered by table item 3B commence before the event mentioned in paragraph (b) occurs.	
12. Schedule 10	31 March 2026.	31 March 2026
13. Schedules 11 and 12	The 28th day after this Act receives the Royal Assent.	7 January 2025

Note: This table relates only to the provisions of this Act as originally enacted. It will not be amended to deal with any later amendments of this Act.

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- (2) Any information in column 3 of the table is not part of this Act. Information may be inserted in this column, or information in it may be edited, in any published version of this Act.

3 Schedules

Legislation 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—AML/CTF programs and business groups

Anti-Money Laundering and Counter-Terrorism Financing Act 2006

1 Section 4

Omit:

- A reporting entity is a financial institution, or other person, who provides designated services. (Designated services are listed in section 6.)

substitute:

- A reporting entity is a person who provides designated services. (Designated services are listed in section 6.). Lead entities of certain business groups (known as reporting groups) are also reporting entities.
- A reporting entity must have and comply with an AML/CTF program.

2 Section 4

Omit:

- Reporting entities must have and comply with anti-money laundering and counter-terrorism financing programs.

3 Section 5

Insert:

AML/CTF compliance officer for a reporting entity means the individual designated as the AML/CTF compliance officer for the reporting entity under subsection 26J(1).

AML/CTF policies of a reporting entity:

- (a) means the policies, procedures, systems and controls of the reporting entity developed under section 26F; and
- (b) if the policies, procedures, systems and controls of the reporting entity are updated—includes the policies, procedures, systems and controls as updated.

AML/CTF program: see section 26B.

4 Section 5 (definition of *anti-money laundering and counter-terrorism financing program*)

Repeal the definition.

5 Section 5

Insert:

business group: see subsection 10A(3).

control has the meaning given by section 11.

6 Section 5 (definition of *control test*)

Repeal the definition.

7 Section 5 (definition of *designated business group*)

Repeal the definition.

8 Section 5

Insert:

governing body of a reporting entity means:

- (a) if the reporting entity is an individual—the individual; or
- (b) otherwise—the individual, or group of individuals, with primary responsibility for the governance and executive decisions of the reporting entity.

9 Section 5 (definition of *joint anti-money laundering and counter-terrorism financing program*)

Repeal the definition.

10 Section 5

Insert:

lead entity of a reporting group: see subsection 10A(5).

member of a reporting group or a business group: see subsection 10A(4).

ML/TF risk assessment of a reporting entity:

- (a) means the risk assessment undertaken by the reporting entity under section 26C; and
- (b) if the assessment is updated under section 26D—includes the risk assessment as updated.

11 Section 5 (definition of *money laundering and terrorism financing risk assessment*)

Repeal the definition.

12 Section 5

Insert:

proliferation financing means conduct that amounts to:

- (a) an offence against the *Charter of the United Nations Act 1945*, or regulations made under that Act, that is prescribed by regulations made under this Act for the purposes of this paragraph; or
- (b) an offence against the *Autonomous Sanctions Act 2011*, or a contravention of regulations made under that Act, that involves sanctions addressing the proliferation of weapons of mass destruction; or
- (c) an offence against the *Autonomous Sanctions Act 2011*, or a contravention of regulations made under that Act, that is prescribed by regulations made under this Act for the purposes of this paragraph; or
- (d) the provision of assets (including funds) or financial services, or other dealing with assets, in contravention of a law of the Commonwealth that:

- (i) implements an international agreement, convention or treaty relating to the proliferation of weapons of mass destruction; and
- (ii) is prescribed by the regulations for the purposes of this paragraph; or
- (e) an offence against a law of a State or Territory that corresponds to an offence referred to in paragraph (a), (b), (c) or (d); or
- (f) an offence against a law of a foreign country or a part of a foreign country that corresponds to an offence referred to in paragraph (a), (b), (c), (d) or (e); or
- (g) an offence against a law of the Commonwealth, a State or a Territory that is prescribed by the regulations for the purposes of this paragraph.

13 Section 5 (definition of *reporting entity*)

Repeal the definition, substitute:

reporting entity means:

- (a) a person who provides a designated service; or
- (b) the lead entity of a reporting group.

14 Section 5

Insert:

reporting group: see subsection 10A(1).

senior manager of a reporting entity means an individual who makes, or participates in making, decisions that affect the whole, or a substantial part, of the business of the reporting entity.

15 Section 5 (definition of *shell bank*)

Omit “section 15”, substitute “section 94A”.

16 Section 5 (definition of *special anti-money laundering and counter-terrorism financing program*)

Repeal the definition.

17 Section 5 (definition of *standard anti-money laundering and counter-terrorism financing program*)

Repeal the definition.

18 After subsection 6(6)

Insert:

Designated services provided within business groups

(6A) Despite anything in this section, a service is not a ***designated service*** if:

- (a) any of the following apply:
 - (i) a member of a business group provides the service to another member of the business group;
 - (ii) the service is of a kind described in item 48 of table 1 and the guarantor and borrower are members of the same business group;
 - (iii) the service is of a kind described in item 49 of table 1 and the guarantor and borrower are members of the same business group;
 - (iv) the service is of a kind specified in the AML/CTF Rules; and
- (b) the service is not of a kind specified in the AML/CTF Rules; and
- (c) the requirements (if any) specified in the AML/CTF Rules are met.

Note 1: Item 48 of table 1 covers guaranteeing a loan, where the guarantee is given in the course of carrying on a business of guaranteeing loans.

Note 2: Item 49 of table 1 covers making a payment, in the capacity of guarantor of a loan, to the lender, where the guarantee was given in the course of carrying on a business of guaranteeing loans.

19 Section 11

Repeal the section, substitute:

10A Key terms relating to reporting groups

Reporting group

- (1) A **reporting group** is:
- (a) a business group, where:
 - (i) at least one person in the group provides a designated service; and
 - (ii) each member of the group satisfies such conditions (if any) as are specified in the AML/CTF Rules; and
 - (iii) the group is not of a kind that, under the AML/CTF Rules, is ineligible to be a reporting group to which this paragraph applies; and
 - (iv) the conditions (if any) relating to changes in membership, dissolution, administration or operation of the group that are specified in the AML/CTF Rules are satisfied; or
 - (b) a group of 2 or more persons, where:
 - (i) each member of the group has elected, in writing, to be a member of the group, and the election is in force; and
 - (ii) each election was made in accordance with the AML/CTF Rules; and
 - (iii) no member of the group is a member of another group to which this paragraph applies; and
 - (iv) each member of the group satisfies such conditions (if any) as are specified in the AML/CTF Rules; and
 - (v) the group is not of a kind that, under the AML/CTF Rules, is ineligible to be a reporting group; and
 - (vi) the conditions (if any) relating to changes in membership, dissolution, administration or operation of the group that are specified in the AML/CTF Rules are satisfied.
- (1A) Subject to subsection (2A), a person may be a member of a group to which paragraph (1)(b) applies even if the person is a member of a group to which paragraph (1)(a) applies.

- (1B) The requirement in subparagraph (1)(b)(i) to make a written election does not apply in relation to a member of a group in the circumstances specified in the AML/CTF Rules.
- (2) Subparagraph (1)(b)(iii) does not apply in the circumstances specified in the AML/CTF Rules.
- (2A) If a person is a member of more than one reporting group, the AML/CTF Rules may specify circumstances in which that person is taken, for the purposes of this Act, to be a member of only one of those reporting groups.

Business groups

- (3) A **business group** is a group of 2 or more persons, where either of the following paragraphs applies:
 - (a) one person in the group controls each other person in the group;
 - (b) the group meets the requirements (if any) specified in the AML/CTF Rules.

Members of reporting groups and business groups

- (4) Each person in a reporting group or a business group is a **member** of that group.

Lead entity of a reporting group

- (5) The **lead entity** of a reporting group means the person in the group that is specified in the AML/CTF Rules as the lead entity for the reporting group.

Note: The lead entity of a reporting group is a reporting entity, see the definition of **reporting entity** in section 5.

11 Meaning of control

- (1) **Control**, of a body corporate, is:
 - (a) having the capacity to cast, or control the casting of, more than one half of the maximum number of votes that might be cast at a general meeting of the body corporate; or

- (b) directly or indirectly holding more than one half of the issued share capital of the body corporate (not including any part of the issued share capital that carries no right to participate beyond a specified amount in a distribution of either profits or capital, and not including mutual capital instruments within the meaning of section 167AD of the *Corporations Act 2001*); or
 - (c) having the capacity to control the composition of the body corporate's board or governing body; or
 - (d) having the capacity to determine the outcome of decisions about the body corporate's financial and operating policies, taking into account:
 - (i) the practical influence that can be exerted (rather than the rights that can be enforced); and
 - (ii) any practice or pattern of behaviour affecting the body corporate's financial or operating policies (whether or not it involves a breach of an agreement or a breach of trust).
- (2) **Control**, of a person other than a body corporate, is:
- (a) having the capacity to control the composition of the person's board or governing body (if any); or
 - (b) having the capacity to determine the outcome of decisions about the person's financial and operating policies, taking into account:
 - (i) the practical influence that can be exerted (rather than the rights that can be enforced); and
 - (ii) any practice or pattern of behaviour affecting the person's financial or operating policies (whether or not it involves a breach of an agreement or a breach of trust).

20 Subparagraph 14(2)(b)(i)

Omit "passes the control test in relation to", substitute "controls".

21 Subparagraph 14(3)(b)(i)

Omit "passes the control test in relation to", substitute "controls".

22 Section 15

Repeal the section.

23 Subsection 21(3)

Omit “regulations” (wherever occurring), substitute “AML/CTF Rules”.

24 After Part 1

Insert:

Part 1A—AML/CTF programs**Division 1—Introduction****26A Simplified outline**

The following is a simplified outline of this Part:

- A reporting entity must have and comply with an AML/CTF program. An AML/CTF program comprises the reporting entity’s ML/TF risk assessment and AML/CTF policies.
- The ML/TF risk assessment is an assessment of the risks of money laundering, financing of terrorism and proliferation financing that the reporting entity may reasonably face in providing its designated services.
- The AML/CTF policies must appropriately manage and mitigate those risks and ensure the reporting entity complies with this Act and instruments under this Act.
- The AML/CTF program must be appropriate to the nature, size and complexity of the reporting entity’s business. For a lead entity of a reporting group, it must be appropriate to the nature, size and complexity of the business of each reporting entity in the reporting group.
- The governing body of the reporting entity has responsibilities relating to the AML/CTF program, including relating to

overseeing and ensuring the reporting entity complies with the AML/CTF policies, this Act and instruments under this Act.

- The reporting entity must have an AML/CTF compliance officer. The AML/CTF compliance officer has various functions, including to oversee and coordinate the effective operation of, and compliance with, the AML/CTF policies.

26B What is an AML/CTF program?

An *AML/CTF program* of a reporting entity comprises:

- (a) the reporting entity's ML/TF risk assessment; and
- (b) the reporting entity's AML/CTF policies.

Division 2—ML/TF risk assessment

26C Reporting entities must undertake an ML/TF risk assessment

- (1) A reporting entity must undertake an assessment (an *ML/TF risk assessment*) that identifies and assesses the risks of money laundering, financing of terrorism and proliferation financing that the reporting entity may reasonably face in providing its designated services.
- (2) The steps taken by a reporting entity in relation to undertaking the reporting entity's ML/TF risk assessment must be appropriate to the nature, size and complexity of the reporting entity's business.

Note: See also section 26U (business of a lead entity of a reporting group).

Additional obligations that apply to reporting entities that provide designated services at or through permanent establishments in Australia

- (3) If the reporting entity provides designated services at or through a permanent establishment of the reporting entity in Australia, the reporting entity must have regard to the following matters in undertaking an ML/TF risk assessment:
 - (a) the kinds of designated services provided, or proposed to be provided, by the reporting entity, including any new or emerging technologies relating to those services;

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- (b) the kinds of customers to whom the reporting entity's designated services are or will be provided;
 - (c) the delivery channels by which the reporting entity's designated services are or will be provided, including any new or emerging technologies relating to those delivery channels;
 - (d) the countries with which the reporting entity deals, or will deal, in providing its designated services;
 - (e) information communicated either directly or indirectly by AUSTRAC to the reporting entity that identifies or assesses the risks associated with the reporting entity's provision of its designated services;
 - (f) the matters (if any) specified in the AML/CTF Rules.
- (4) Subsection (3) does not limit subsection (1).

26D Reporting entities must review and update ML/TF risk assessment

Review of ML/TF risk assessment

- (1) A reporting entity must review its ML/TF risk assessment for the purpose of identifying and assessing any new or changed risks of money laundering, financing of terrorism and proliferation financing that the reporting entity may reasonably face in providing its designated services:
 - (a) if any of the following occur:
 - (i) there is a significant change to any of the matters mentioned in subsection 26C(3);
 - (ii) AUSTRAC communicates to the reporting entity information that identifies or assesses risks associated with the reporting entity's provision of its designated services;
 - (iii) circumstances specified in the AML/CTF Rules; and
 - (b) in any event—at least once every 3 years.
- (2) The review must be undertaken:
 - (a) for a significant change that is within the control of the reporting entity—before the significant change occurs; or

- (b) for a significant change that is not within the control of the reporting entity—as soon as practicable after the significant change occurs; or
 - (c) for information communicated for the purposes of subparagraph (1)(a)(ii)—as soon as practicable after the information is communicated to the reporting entity; or
 - (d) for circumstances specified in the AML/CTF Rules—at the time, or within the period, specified in the AML/CTF Rules.
- (3) The review must be appropriate to the nature, size and complexity of the reporting entity’s business.

Note: See also section 26U (business of a lead entity of a reporting group).

Updating ML/TF risk assessment

- (4) A reporting entity must update its ML/TF risk assessment to address any issues identified by a review:
- (a) for a significant change that is within the control of the reporting entity—before the significant change occurs; or
 - (b) in any other case—as soon as practicable after the review is completed.

26E Reporting entities must have up-to-date ML/TF risk assessment before providing designated services

- (1) A reporting entity must not commence to provide a designated service to a customer if the reporting entity does not comply with section 26C or 26D in relation to the designated service.
- (2) Subsection (1) is a civil penalty provision.
- (3) A reporting entity that contravenes subsection (1) commits a separate contravention of that subsection in respect of each designated service that the reporting entity provides to a customer at or through a permanent establishment of the reporting entity in Australia.
- (4) A reporting entity that contravenes subsection (1) commits a separate contravention of that subsection on each day that the reporting entity provides designated services at or through a

permanent establishment of the reporting entity in a foreign country.

Division 3—AML/CTF policies

26F Reporting entities must develop and maintain AML/CTF policies

- (1) A reporting entity must develop and maintain policies, procedures, systems and controls (*AML/CTF policies*) that:
 - (a) appropriately manage and mitigate the risks of money laundering, financing of terrorism and proliferation financing that the reporting entity may reasonably face in providing its designated services; and
 - (b) ensure the reporting entity complies with the obligations imposed by this Act, the regulations and the AML/CTF Rules on the reporting entity; and
 - (c) are appropriate to the nature, size and complexity of the reporting entity's business; and
 - (d) comply with any requirements specified in the AML/CTF Rules.

Note: See also section 26U (business of a lead entity of a reporting group).

Additional obligations that apply to reporting entities that provide designated services at or through permanent establishments in Australia

- (2) Subsections (3) and (4) apply if the reporting entity provides a designated service at or through a permanent establishment of the reporting entity in Australia.
- (3) Without limiting paragraph (1)(a), the AML/CTF policies of a reporting entity must deal with the following:
 - (a) identifying significant changes to any of the matters mentioned in subsection 26C(3);
 - (b) carrying out customer due diligence in accordance with Part 2;
 - (c) reviewing and updating the AML/CTF policies in the following circumstances:

- (i) in response to a review of the reporting entity's ML/TF risk assessment under section 26D;
 - (ii) circumstances specified in the AML/CTF Rules;
 - (d) reviewing the AML/CTF policies of the reporting entity at the intervals or with the frequency specified in the AML/CTF Rules (and in any event at least once every 3 years);
 - (e) any other matters specified in the AML/CTF Rules.
- (4) Without limiting paragraph (1)(b), the AML/CTF policies of a reporting entity must deal with the following:
- (a) if the reporting entity is not an individual—ensuring its governing body is sufficiently informed of the risks of money laundering, financing of terrorism and proliferation financing that the reporting entity may reasonably face in providing its designated services;
 - (b) designating an AML/CTF compliance officer for the reporting entity;
 - (c) designating one or more senior managers of the reporting entity as responsible for approving:
 - (i) the AML/CTF policies of the reporting entity; and
 - (ii) the ML/TF risk assessment of the reporting entity;
 - (d) undertaking due diligence in relation to persons who are, or will be, employed or otherwise engaged by the reporting entity and who perform, or will perform, functions relevant to the reporting entity's obligations under this Act;
 - (e) providing training to persons who are employed or otherwise engaged by the reporting entity and who perform, or will perform, functions relevant to the reporting entity's obligations under this Act in relation to:
 - (i) the risk of money laundering, financing of terrorism and proliferation financing that the reporting entity may reasonably face in providing its designated services; and
 - (ii) the obligations imposed by this Act, the regulations and the AML/CTF Rules on the reporting entity;
 - (f) the conduct of independent evaluations of the reporting entity's AML/CTF program, including the frequency with which such evaluations must be conducted, which must:
 - (i) be appropriate to the nature, size and complexity of the reporting entity's business; and
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- (ii) be at least once every 3 years;
- (g) any other matters specified in the AML/CTF Rules.

Note: See also section 26U (business of a lead entity of a reporting group).

Additional obligations that apply to lead entities of reporting groups

- (5) Without limiting paragraph (1)(a), if a reporting entity is the lead entity of a reporting group, the AML/CTF policies of the reporting entity must deal with the following:
 - (a) ensuring the appropriate sharing of information between members of the reporting group for the following purposes:
 - (i) carrying out customer due diligence under Part 2;
 - (ii) appropriately identifying, assessing, managing and mitigating the risks of money laundering, financing of terrorism and proliferation financing that each reporting entity that is a member of the reporting group may reasonably face in providing its designated services;
 - (b) any other matters specified in the AML/CTF Rules.
- (6) Without limiting paragraph (1)(b), if a reporting entity is the lead entity of a reporting group, the AML/CTF policies of the reporting entity must deal with the following:
 - (a) ensuring the sharing of information between members of the reporting group that is necessary for the members of the reporting group who are reporting entities to comply with:
 - (i) their obligations imposed by this Act, the regulations and the AML/CTF Rules; and
 - (ii) the AML/CTF policies of the lead entity;
 - (b) if any member of the reporting group discharges an obligation imposed on another member of the reporting group by this Act, the regulations or the AML/CTF Rules:
 - (i) which members of the reporting group may discharge which obligations of which other member; and
 - (ii) ensuring that each member of the reporting group that is a reporting entity makes, or has access to, records to demonstrate any discharge by another member of the reporting group of any such obligations imposed on the reporting entity;

- (c) ensuring the confidentiality and appropriate use of any information shared between members of the reporting group, including to prevent any contravention of subsection 123(1) by any member of the reporting group;
- (d) any other matters specified in the AML/CTF Rules.

Note: For other rules about how this Part applies in relation to reporting groups, see sections 26U and 236B.

AML/CTF Rules

- (7) The AML/CTF Rules may do either or both of the following:
 - (a) specify requirements that must be complied with in relation to a matter mentioned in subsection (3), (4), (5) or (6);
 - (b) set out circumstances in which the AML/CTF policies of a reporting entity are taken to comply with a matter mentioned in those subsections.

Reporting entities must develop and maintain AML/CTF policies before providing designated services

- (8) A reporting entity must not commence to provide a designated service to a customer if the reporting entity does not comply with subsection (1).

Civil penalty

- (8A) Subsection (8) is a civil penalty provision.
- (9) A reporting entity that contravenes subsection (8) commits a separate contravention of that subsection in respect of each designated service that the reporting entity provides to a customer at or through a permanent establishment of the reporting entity in Australia.
- (10) A reporting entity that contravenes subsection (8) commits a separate contravention of that subsection on each day that the reporting entity provides designated services at or through a permanent establishment of the reporting entity in a foreign country.

Exception

- (11) Despite subsection (1), a reporting entity is not required to develop or maintain policies, procedures, systems and controls that specifically deal with the risk of proliferation financing if:
- (a) the reporting entity reasonably assesses, under section 26C or 26D, the risk of proliferation financing that the reporting entity may reasonably face as low; and
 - (b) the reporting entity reasonably assesses that its risk of proliferation financing can be appropriately managed and mitigated by its policies, procedures, systems and controls that manage and mitigate the risks of money laundering or financing of terrorism.
- (12) A person who wishes to rely on subsection (11) bears a legal burden in relation to that matter.

26G Reporting entities must comply with AML/CTF policies

- (1) A reporting entity must comply with the AML/CTF policies of the reporting entity.
- (2) If:
- (a) a reporting entity is a member of a reporting group; and
 - (b) the reporting entity is not the lead entity of the reporting group;
- the reporting entity must also comply with the AML/CTF policies of the lead entity of the reporting group that apply to the reporting entity.

Note: The lead entity of the reporting group must comply with its own AML/CTF policies under subsection (1).

- (3) Subsections (1) and (2) are civil penalty provisions.

Division 4—AML/CTF responsibilities of governing bodies**26H AML/CTF responsibilities of governing bodies**

- (1) The governing body of a reporting entity must:
- (a) exercise appropriate ongoing oversight of:

- (i) the reporting entity's identification and assessment of risk for the purposes of its ML/TF risk assessment; and
 - (ii) the reporting entity's compliance with its AML/CTF policies, the Act, the regulations and the AML/CTF Rules; and
 - (b) take reasonable steps to ensure that the reporting entity:
 - (i) is appropriately identifying, assessing, managing and mitigating the risks of money laundering, financing of terrorism and proliferation financing that the reporting entity may reasonably face in providing its designated services; and
 - (ii) is otherwise complying with its AML/CTF policies, the Act, the regulations and the AML/CTF Rules.
- (2) A reporting entity contravenes this subsection if the governing body of the reporting entity contravenes subsection (1).
- (3) Subsection (2) is a civil penalty provision.

Division 5—AML/CTF compliance officers

26J Reporting entities must designate an individual as the AML/CTF compliance officer for the reporting entity

- (1) The reporting entity must designate an individual as the compliance officer (the *AML/CTF compliance officer*) for the reporting entity.

AML/CTF compliance officers must have sufficient authority etc.

- (2) A reporting entity must ensure that the individual designated as the AML/CTF compliance officer for the reporting entity:
- (a) is a person employed or otherwise engaged by the reporting entity at management level; and
 - (b) has sufficient authority, independence and access to resources and information to ensure the individual can perform the functions of an AML/CTF compliance officer effectively.

AML/CTF compliance officers must meet certain requirements

- (3) An individual is not eligible to be designated as the AML/CTF compliance officer for a reporting entity unless the individual:
 - (a) if the reporting entity provides its designated services at or through a permanent establishment of the reporting entity in Australia—is a resident of Australia; and
 - (b) is a fit and proper person; and
 - (c) meets the requirements (if any) specified in the AML/CTF Rules.
- (4) The AML/CTF Rules may specify matters to which a reporting entity must have regard in determining whether an individual is a fit and proper person for the purposes of paragraph (3)(b).

Civil penalties

- (5) Subsection (2) is a civil penalty provision.
- (6) A reporting entity contravenes this subsection if:
 - (a) the reporting entity designates an individual as its AML/CTF compliance officer; and
 - (b) the individual is not eligible under subsection (3) to be designated as the AML/CTF compliance officer for the reporting entity.
- (7) Subsection (6) is a civil penalty provision.

26K Reporting entities must have an AML/CTF compliance officer

- (1) If:
 - (a) a reporting entity commences to provide a designated service; and
 - (b) an individual is not designated as the AML/CTF compliance officer for the reporting entity;

the reporting entity must, no later than 28 days after the day on which the reporting entity commences to provide the designated service, designate an individual as the AML/CTF compliance officer for the reporting entity.
- (2) If:

- (a) a reporting entity commences to provide a designated service; and
 - (b) the individual designated as the AML/CTF compliance officer for the reporting entity ceases to be eligible under subsection 26J(3) to be so designated;
- the reporting entity must, no later than 28 days after the day on which the individual ceases to be eligible, designate another individual as the AML/CTF compliance officer for the reporting entity.
- (3) If:
- (a) a reporting entity is required under subsection (1) or (2) to designate an individual as the AML/CTF compliance officer for the reporting entity by a particular time; and
 - (b) the reporting entity does not do so by that time;
- then the obligation to comply with the requirement continues until:
- (c) the reporting entity designates an individual as the AML/CTF compliance officer for the reporting entity; or
 - (d) the reporting entity ceases to be a reporting entity;
- whichever occurs first.
- (4) A reporting entity that contravenes subsection (1) or (2) by failing to designate an individual as the AML/CTF compliance officer for the reporting entity by a particular time (the *deadline*) is taken to commit a separate contravention of that subsection on each day that occurs during the period:
- (a) beginning on the day on which the deadline occurs; and
 - (b) ending on the day on which the reporting entity's obligation to comply with the requirement ends (see subsection (3)).
- (5) To avoid doubt, a reporting entity does not contravene subsection (1) or (2) more than once on any particular day, even if the reporting entity commences to provide a designated service more than once on a particular day or during a particular period.
- (6) Subsections (1) and (2) are civil penalty provisions.

26L AML/CTF compliance officer's functions

The functions of the AML/CTF compliance officer for a reporting entity are:

- (a) to oversee and coordinate the reporting entity's day-to-day compliance with this Act, the regulations and the AML/CTF Rules; and
- (b) to oversee and coordinate the effective operation of and compliance with the reporting entity's AML/CTF policies; and
- (c) to communicate, on behalf of the reporting entity, with AUSTRAC; and
- (d) to do anything incidental to or conducive to the performance of any of the above functions; and
- (e) any other functions specified in the AML/CTF Rules.

26M Reporting entities must notify AUSTRAC of entity's AML/CTF compliance officer

- (1) A reporting entity must notify AUSTRAC of the individual who is designated as the reporting entity's AML/CTF compliance officer within 14 days after the individual is designated as the AML/CTF compliance officer for the reporting entity.
- (2) A notice under subsection (1):
 - (a) must be in the approved form; and
 - (b) must contain such information, and be accompanied by such documents, as is required by the approved form.
- (3) Subsection (1) is a civil penalty provision.

Division 6—AML/CTF program documentation and approvals**26N AML/CTF program documentation**

- (1) A reporting entity must document the following, within the period (if any) specified in the AML/CTF Rules:
 - (a) its AML/CTF program;

- (b) any other matter relating to the AML/CTF program of the reporting entity specified in the AML/CTF Rules.
- (2) A reporting entity must comply with subsection (1).
- (3) Subsection (2) is a civil penalty provision.
- (4) If a reporting entity is the responsible entity of a registered scheme (within the meaning of the *Corporations Act 2001*), the reporting entity's AML/CTF program may be documented in the same document as the registered scheme's compliance plan under that Act.

26P AML/CTF program approvals

- (1) A reporting entity's ML/TF risk assessment and AML/CTF policies, including any updates to either, must be approved by a senior manager of the reporting entity.
- (2) Any updates to a reporting entity's ML/TF risk assessment must be notified, in writing, to the governing body of the reporting entity as soon as practicable after the update is made.
- (3) A reporting entity must comply with a requirement under this section.
- (4) Subsection (3) is a civil penalty provision.

26Q Requests for AML/CTF documentation

- (1) The AUSTRAC CEO may, by written notice, request a reporting entity to produce one or more of the documents required by subsection 26N(1) within the period specified in the notice.
- (2) A reporting entity must comply with a notice given under subsection (1).
- (3) Subsection (2) is a civil penalty provision.

Division 7—Other matters**26R AUSTRAC CEO may require reporting entity to undertake ML/TF risk assessment etc.***Scope*

- (1) This section applies if the AUSTRAC CEO is satisfied that:
 - (a) a reporting entity does not have an AML/CTF program; or
 - (b) the AML/CTF program of a reporting entity is not up to date; or
 - (c) the AML/CTF program of a reporting entity does not appropriately identify, assess, manage or mitigate the risk of money laundering, financing of terrorism and proliferation financing that the reporting entity may reasonably face in providing its designated services.

Requirement

- (2) The AUSTRAC CEO may, by written notice given to the reporting entity, require the reporting entity to:
 - (a) do one or more of the following:
 - (i) undertake and document an ML/TF risk assessment of the reporting entity;
 - (ii) review and update the ML/TF risk assessment of the reporting entity;
 - (iii) develop and document AML/CTF policies of the reporting entity;
 - (iv) review and update the AML/CTF policies of the reporting entity; and
 - (b) provide a copy of the documentation within:
 - (i) the period specified in the notice; or
 - (ii) if the AUSTRAC CEO allows a longer period—that longer period.
- (3) A person commits an offence if:
 - (a) the person is subject to a requirement under subsection (2); and
 - (b) the person engages in conduct; and

(c) the person's conduct breaches the requirement.

Penalty: Imprisonment for 6 months or 30 penalty units, or both.

Civil penalty

(4) A reporting entity must comply with a requirement under subsection (2).

(5) Subsection (4) is a civil penalty provision.

26S Registered remittance affiliates of a registered remittance network provider

(1) A reporting entity that is a registered remittance network provider must make available an AML/CTF program to its registered remittance affiliates.

(2) Subsection (1) is a civil penalty provision.

(3) To avoid doubt, subsection (1) does not prevent any of the registered remittance affiliates from:

- (a) undertaking a risk assessment for the remittance affiliate; or
- (b) developing AML/CTF policies for the remittance affiliate.

(4) If a senior manager of a remittance affiliate of a registered remittance network provider approves the registered remittance network provider's:

- (a) ML/TF risk assessment; and
- (b) AML/CTF policies;

the remittance affiliate is taken to have complied with the remittance affiliate's obligations under section 26C and 26F in respect of the remittance affiliate's designated services to which the registered remittance network provider's AML/CTF program applies.

26T Application of Part to holders of Australian financial services licences

(1) This section applies if all of the designated services provided by a reporting entity are covered by item 54 of table 1 in section 6.

Note: Item 54 of table 1 in section 6 covers a holder of an Australian financial services licence who arranges for a person to receive a designated service.

- (2) Paragraph 26F(1)(a) applies in relation to the reporting entity as if it instead required policies, procedures, systems and controls that:
 - (a) relate to undertaking initial customer due diligence in accordance with section 28; and
 - (b) are appropriate to the risks of money laundering, financing of terrorism and proliferation financing that the reporting entity may reasonably face in providing its designated services.
- (3) The following provisions of this Part do not apply to the reporting entity:
 - (a) paragraphs 26F(1)(b) and (3)(a) to (d) and subsection 26F(4);
 - (b) section 26H;
 - (c) subsection 26P(2);
 - (d) Division 5.

26U Business of a lead entity of a reporting group

In applying this Part in relation to a reporting entity that is the lead entity of a reporting group, a reference to the nature, size and complexity of the reporting entity's business is taken to be a reference to the nature, size and complexity of the business of the lead entity and each other reporting entity that is a member of the reporting group.

Note: For other rules about how this Part applies in relation to a lead entity of a reporting group, see section 236B.

26V General exemptions

- (1) This Part does not apply to a designated service that is of a kind specified in the AML/CTF Rules.
- (2) The AML/CTF Rules may provide that a specified provision of this Part does not apply to a designated service that is of a kind specified in the AML/CTF Rules.
- (3) This Part does not apply to a designated service that is provided in circumstances specified in the AML/CTF Rules.

- (4) The AML/CTF Rules may provide that a specified provision of this Part does not apply to a designated service that is provided in circumstances specified in the AML/CTF Rules.

25 Subsection 35F(5)

Repeal the subsection.

26 Paragraph 38(d)

Omit “money laundering or financing of terrorism”, substitute “money laundering, financing of terrorism or proliferation financing”.

27 Subsection 39(5)

Repeal the subsection.

28 Subsections 47(6) and (7)

Repeal the subsections.

29 Section 51A

Omit:

- | |
|--|
| <ul style="list-style-type: none">• Providers of designated services must be entered on the Reporting Entities Roll. |
|--|

substitute:

- | |
|--|
| <ul style="list-style-type: none">• Reporting entities must be entered on the Reporting Entities Roll. |
|--|

30 Part 7

Repeal the Part.

31 After section 94

Insert:

94A Shell banks

- (1) A *shell bank* is a corporation that:

- (a) is incorporated in a foreign country; and
- (b) is authorised to carry on banking business in its country of incorporation; and
- (c) does not have a physical presence in its country of incorporation; and
- (d) is not an affiliate of another corporation that:
 - (i) is incorporated in a particular country; and
 - (ii) is authorised to carry on banking business in its country of incorporation; and
 - (iii) has a physical presence in its country of incorporation.

When a corporation has a physical presence in a country

- (2) For the purposes of determining what is a shell bank, a corporation has a **physical presence** in a country if, and only if:
 - (a) the corporation carries on banking business at a place in that country; and
 - (b) at least one full-time employee of the corporation performs banking-related duties at that place.

When a corporation is affiliated with another corporation

- (3) For the purposes of determining what is a shell bank, a corporation is **affiliated** with another corporation if, and only if:
 - (a) the corporation is a subsidiary of the other corporation; or
 - (b) at least one individual controls both corporations; or
 - (c) under the regulations, both corporations are taken to be under common control.

32 Section 104

Omit:

- A reporting entity must retain a copy of its anti-money laundering and counter-terrorism financing program.

substitute:

- A reporting entity must retain records relating to its AML/CTF program.

33 Subsection 108(4)

Repeal the subsection.

34 Subsection 114B(4)

Repeal the subsection.

35 Division 5 of Part 10

Repeal the Division, substitute:

Division 5—AML/CTF program record-keeping requirements

116 Retention of records relating to Part 1A

- (1) A reporting entity must keep records that:
 - (a) are reasonably necessary to demonstrate compliance with the reporting entity's obligations under Part 1A; and
 - (b) are in the English language, or in a form in which the records are readily accessible and readily convertible into writing in the English language.
- (2) Subsection (1) is a civil penalty provision.
- (3) A person who is or was a reporting entity must retain the records referred to in subsection (1) throughout the period:
 - (a) beginning at the time the record was made; and
 - (b) ending 7 years after the record is no longer relevant to the reporting entity's compliance with its obligations under Part 1A.
- (4) Subsection (3) is a civil penalty provision.

35A Paragraph 123(1)(a)

Repeal the paragraph, substitute:

- (a) the person is or has been:

- (i) a reporting entity; or
- (ii) an officer, employee or agent of a reporting entity; or
- (iii) a member of a reporting group; or
- (iv) an officer, employee or agent of a member of a reporting group; or
- (v) required by a notice under subsection 49(1) to give information or produce documents; or
- (vi) required by notice under subsection 49B(2) to give information or produce documents; and

36 Paragraph 124(2)(a)

After “section”, insert “26R,”.

37 Paragraph 124(2)(a)

Omit “, 162 or 165”, substitute “or 162”.

38 Subsection 161(1)

Repeal the subsection, substitute:

- (1) This section applies if the AUSTRAC CEO has reasonable grounds to suspect that a reporting entity has not taken, or is not taking, appropriate action to identify, assess, manage or mitigate the risks of money laundering, financing of terrorism and proliferation financing that the reporting entity may reasonably face in providing its designated services at or through a permanent establishment of the reporting entity in Australia.

39 Paragraph 161(2)(b)

Repeal the paragraph, substitute:

- (b) arrange for the external auditor to carry out an external audit of the reporting entity’s capacity and endeavours to identify, assess, manage or mitigate the risks of money laundering, financing of terrorism and proliferation financing that the reporting entity may reasonably face in providing its designated services at or through a permanent establishment of the reporting entity in Australia; and

40 Subsection 161(4)

Repeal the subsection, substitute:

- (4) The matters that may be specified under paragraph (3)(a) may include either or both of the following:
- (a) an assessment of the risks of money laundering, financing of terrorism and proliferation financing that the reporting entity may reasonably face in providing its designated services at or through a permanent establishment of the reporting entity in Australia;
 - (b) an assessment of what the reporting entity will need to do, or continue to do, to appropriately identify, assess, manage or mitigate the risks of money laundering, financing of terrorism and proliferation financing that the reporting entity may reasonably face in providing its designated services at or through a permanent establishment of the reporting entity in Australia.

41 Subparagraph 161(6)(b)(i)

Omit “belongs to a designated business group”, substitute “is a member of a reporting group”.

42 Subparagraph 161(6)(b)(ii)

Omit “designated business group”, substitute “reporting group”.

43 Subparagraph 162(6)(b)(i)

Omit “belongs to a designated business group”, substitute “is a member of a reporting group”.

44 Subparagraph 162(6)(b)(ii)

Omit “designated business group”, substitute “reporting group”.

45 Division 8 of Part 13

Repeal the Division.

46 Subsection 184(4) (before paragraph (b) of the definition of *designated infringement notice provision*)

Insert:

- (aa) subsection 26K(1) or (2) (which deal with reporting entities' obligation to designate an AML/CTF compliance officer);
- (ab) subsection 26M(1) (which deals with notifications about AML/CTF compliance officers);
- (ac) subsection 26N(2) (which deals with AML/CTF program documentation);
- (ad) subsection 26P(3) (which deals with AML/CTF program approvals);
- (ae) subsection 26Q(2) (which deals with requests for AML/CTF program documentation);

47 Subsection 184(4) (paragraph (g) of the definition of designated infringement notice provision)

Repeal the paragraph, substitute:

- (g) subsection 116(1) or (3) (which deal with retaining records relating to AML/CTF programs);

48 Paragraphs 207(3)(a) and (b)

Omit “designated business group”, substitute “reporting group”.

49 Section 234

After:

- In proceedings for a contravention of this Act or the regulations, it is a defence if the defendant proves that the defendant took reasonable precautions, and exercised due diligence, to avoid the contravention.

insert:

- There is a defence to a contravention of certain civil penalty provisions relating to the law of a foreign country preventing compliance.
 - Provision is made in relation to how this Act applies to reporting groups.

50 After section 236

Insert:

236A Defence of law of foreign country preventing compliance

- (1) A reporting entity does not contravene a civil penalty provision in Part 1A or 2 if:
 - (a) the reporting entity provides a designated service at or through a permanent establishment in a foreign country; and
 - (b) a law of the foreign country that applies in the place where the permanent establishment is located prevents the reporting entity from complying with that civil penalty provision; and
 - (c) before the conduct alleged to constitute the contravention occurs, the reporting entity has given written notice, in the approved form, to the AUSTRAC CEO of those facts; and
 - (d) at the time the conduct alleged to constitute the contravention occurs, the reporting entity is taking reasonable steps to ensure that the reporting entity is appropriately identifying, assessing, managing and mitigating any additional risk of money laundering, terrorism financing or proliferation financing associated with being prevented from complying with that civil penalty provision.
- (2) A person who wishes to rely on subsection (1) bears a legal burden in relation to that matter.

236B Application of this Act in relation to reporting groups

Designated services of reporting group taken to be provided by lead entity for certain purposes

- (1) Subsection (2) applies if a reporting entity (the *ordinary member*) that is a member of a reporting group but is not the lead entity of the reporting group proposes to provide, commences to provide, or provides, a designated service.
- (2) For the purposes of Parts 1A, 2, 3A and 10, and Division 9 of Part 15, the lead entity is also taken to have proposed to provide, commenced to provide, or provided, as the case requires, the designated service in the same circumstances as those in which the

service is proposed to be provided, is commenced to have been provided, or is provided, by the ordinary member.

Note: In relation to the application of Part 1A to reporting groups, see also section 26U (business of a lead entity of a reporting group).

- (3) For the purposes of subsection (2), the same circumstances include:
- (a) that a permanent establishment of the ordinary member is taken to be a permanent establishment of the lead entity; and
 - (b) that the lead entity is taken to provide the designated service in the same capacity as the ordinary member; and
 - (c) that the lead entity is taken to have received any information communicated either directly or indirectly by AUSTRAC to the ordinary member that identifies or assesses the risks associated with the ordinary member's provision of the designated service; and
 - (d) a circumstance specified by the AML/CTF Rules.
- (4) Subsection (3) does not limit subsection (2).

Discharge of obligations by members of a reporting group

- (5) If:
- (a) a reporting entity is a member of a reporting group; and
 - (b) an obligation is imposed on the reporting entity by a provision of this Act, the regulations or the AML/CTF Rules; and
 - (c) such other conditions (if any) as are specified in the AML/CTF Rules are satisfied; and
 - (d) the obligation is not of a kind, or does not arise in circumstances, specified in the AML/CTF Rules;
- the obligation may be discharged by any other member of the reporting group.

Note: The member who discharges the obligation need not be a reporting entity.

Contraventions of civil penalty provisions by members of reporting groups

- (6) A civil penalty provision that would otherwise be contravened only by a reporting entity that is:

- (a) a member of a reporting group; and
 - (b) not the lead entity of the reporting group;
- is taken to have been contravened by both the reporting entity and the lead entity.

Schedule 2—Customer due diligence

Part 1—Main amendments

Anti-Money Laundering and Counter-Terrorism Financing Act 2006

1 Section 4

Omit:

- A reporting entity must carry out a procedure to verify a customer's identity before providing a designated service to the customer. However, in special cases, the procedure may be carried out after the provision of the designated service.

substitute:

- A reporting entity must undertake initial customer due diligence before providing a designated service to the customer. However, in special cases, initial customer due diligence may be carried out after the provision of the designated service.

2 Section 4

Omit:

- Certain pre-commencement customers are subject to modified identification procedures.

substitute:

- Certain pre-commencement customers are subject to modified customer due diligence.

3 Section 4

Omit:

- Certain low-risk services are subject to modified identification procedures.

substitute:

- Simplified customer due diligence may be undertaken in certain low risk circumstances as part of initial and ongoing customer due diligence.

4 Section 5 (definition of *applicable customer identification procedure*)

Repeal the definition.

5 Section 5

Insert:

beneficial owner of a person (other than an individual) means an individual who:

- ultimately owns (either directly or indirectly) 25% or more of the person; or
- controls (directly or indirectly) the person.

business relationship means a relationship between a reporting entity and a customer involving the provision of a designated service or designated services that has, or could reasonably be expected to have, an element of duration.

child: without limiting who is a child of another person for the purposes of this Act, each of the following is the **child** of a person:

- a stepchild or an adopted child of the person;
- someone who would be the stepchild of the person except that the person is not legally married to the person's partner;
- someone who is a child of the person within the meaning of the *Family Law Act 1975*.

de facto partner has the same meaning as in the *Acts Interpretation Act 1901*.

domestic politically exposed person means:

- (a) an individual who holds an office or position (whether or not in or for the Commonwealth) specified in the AML/CTF Rules; or
- (b) an individual who is a member of the legislature of the Commonwealth or of a State or Territory; or
- (c) a family member of an individual covered by paragraph (a) or (b); or
- (d) an individual who is known (having regard to information that is public or readily available) to have:
 - (i) joint beneficial ownership of a body corporate or legal arrangement with an individual covered by paragraph (a) or (b); or
 - (ii) sole beneficial ownership of a body corporate or legal arrangement on behalf or for the benefit of an individual covered by paragraph (a) or (b); or
 - (iii) any other close business relations with an individual covered by paragraph (a) or (b).

family member of an individual who is covered by:

- (a) paragraph (a) or (b) of the definition of **domestic politically exposed person** in this section; or
- (b) paragraph (a) of the definition of **foreign politically exposed person** in this section; or
- (c) paragraph (a) of the definition of **international organisation politically exposed person** in this section;

includes:

- (d) a spouse, de facto partner, or other person who is equivalent to a spouse or de facto partner under any applicable law of a foreign country, of the individual; and
- (e) a child of the individual; and
- (f) a spouse or de facto partner, or other person who is equivalent to a spouse or de facto partner under any applicable law of a foreign country, of a child of the individual; and
- (g) a parent of the individual.

foreign politically exposed person means:

- (a) an individual who holds a prominent office or position or public function in or for the legislature, executive or judiciary

of a foreign country, including an individual who holds any of the following offices or positions:

- (i) head of state or head of government;
 - (ii) member of the executive council of government;
 - (iii) member of a legislature;
 - (iv) minister, deputy minister or equivalent office or position;
 - (v) judge of a supreme court, constitutional court or other court of general jurisdiction or last resort;
 - (vi) ambassador, high commissioner or charge d'affaires;
 - (vii) high ranking military officer;
 - (viii) head or board member of a government body;
 - (ix) head or board member of a state-owned company or a state-owned bank;
 - (x) member of a governing body of a political party represented in a legislature;
 - (xi) an office or position prescribed in the AML/CTF Rules; or
- (b) a family member of an individual covered by paragraph (a); or
- (c) an individual who is known (having regard to information that is public or readily available) to have:
- (i) joint beneficial ownership of a body corporate or legal arrangement with an individual covered by paragraph (a); or
 - (ii) sole beneficial ownership of a body corporate or legal arrangement on behalf or for the benefit of an individual covered by paragraph (a); or
 - (iii) any other close business relations with an individual covered by paragraph (a).

Note: *Foreign country* has an extended meaning—see the definition of *foreign country* in this section.

international organisation politically exposed person means:

- (a) an individual who is entrusted with a prominent public function, position or office of a public international organisation, including a head, deputy head or board member in a public international organisation;

- (b) a family member of an individual covered by (a);
- (c) an individual who is known (having regard to information that is public or readily available) to have:
 - (i) joint beneficial ownership of a body corporate or legal arrangement with an individual covered by paragraph (a); or
 - (ii) sole beneficial ownership of a body corporate or legal arrangement on behalf or for the benefit of an individual covered by paragraph (a); or
 - (iii) any other close business relations with an individual covered by paragraph (a).

KYC information (short for know your customer information) about a customer of a reporting entity means information about the customer that:

- (a) provides reasonable grounds for the reporting entity to establish the matters mentioned in subsection 28(2); or
- (b) enables the reporting entity to identify or assess the ML/TF risk of the customer.

ML/TF risk, of a customer, means the risks of money laundering, financing of terrorism and proliferation financing that a reporting entity may reasonably face in providing its designated service, or designated services, to the customer.

nested services relationship means a relationship that involves the provision of a designated service by a reporting entity that is a remitter, virtual asset service provider or financial institution to a customer that is a remitter, virtual asset service provider or financial institution where:

- (a) the reporting entity provides the designated service at or through a permanent establishment in one country; and
- (b) the customer uses the designated service to provide services to its own customers at or through a permanent establishment in another country; and
- (c) the relationship is not a correspondent banking relationship.

occasional transaction means the provision of a designated service by a reporting entity to a customer other than as part of a business relationship.

parent: without limiting who is a parent of another person for the purposes of this Act, a person is the **parent** of another person if the other person is the person's child because of the definition of **child** in this section.

person designated for targeted financial sanctions means:

- (a) a designated person or entity (within the meaning of regulations made under the *Charter of the United Nations Act 1945*); or
- (b) a designated person or entity (within the meaning of regulations made under the *Autonomous Sanctions Act 2011*).

politically exposed person means:

- (a) a domestic politically exposed person; or
- (b) a foreign politically exposed person; or
- (c) an international organisation politically exposed person.

pre-commencement customer: see subsection 36(1).

public international organisation has the same meaning as in section 70.1 of the *Criminal Code*.

spouse of a person includes a de facto partner of the person within the meaning of the *Acts Interpretation Act 1901*.

6 Part 2 (heading)

Repeal the heading, substitute:

Part 2—Customer due diligence

7 Divisions 1 to 5 of Part 2

Repeal the Divisions, substitute:

Division 1—Introduction

27 Simplified outline

The following is a simplified outline of this Part:

- A reporting entity must undertake initial customer due diligence before providing a designated service to a customer. However, in special cases, initial customer due diligence may be carried out after the provision of the designated service.
- A reporting entity must undertake ongoing customer due diligence in relation to the provision by the reporting entity of designated services.
- Simplified customer due diligence may be undertaken in certain low risk circumstances as part of initial and ongoing customer due diligence.
- Enhanced customer due diligence must be undertaken in certain circumstances as part of initial and ongoing customer due diligence.
- Certain pre-commencement customers are subject to modified customer due diligence.
- Exemptions from initial customer due diligence, and ongoing customer due diligence, apply in certain circumstances.

Division 2—Initial customer due diligence

28 Undertaking initial customer due diligence

- (1) A reporting entity must not commence to provide a designated service to a customer if the reporting entity has not established on reasonable grounds each of the matters in subsection (2) in relation to the customer.

Note 1: See also section 31 (simplified customer due diligence).

Note 2: See also section 32 (enhanced customer due diligence).

Note 3: See section 36 for rules that apply to pre-commencement customers.

- (2) The matters are as follows:
- (a) the identity of the customer;
 - (b) the identity of any person on whose behalf the customer is receiving the designated service;

Schedule 2 Customer due diligence

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- (c) the identity of any person acting on behalf of the customer and their authority to act;
 - (d) if the customer is not an individual—the identity of any beneficial owners of the customer;
 - (e) 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:
 - (i) a politically exposed person; or
 - (ii) a person designated for targeted financial sanctions;
 - (f) the nature and purpose of the business relationship or occasional transaction;
 - (g) any other matter relating to the customer that is specified in the AML/CTF Rules.
- (3) Without limiting subsection (1), a reporting entity must do the following for the purposes of establishing on reasonable grounds the matters in subsection (2):
- (a) if the customer is an individual—take reasonable steps to establish that the customer is the person the customer claims to be;
 - (b) identify the ML/TF risk of the customer, based on KYC information about the customer that is reasonably available to the reporting entity before commencing to provide the designated service;
 - (c) collect KYC information about the customer that is appropriate to the ML/TF risk of the customer;
 - (d) verify, using reliable and independent data, such of the KYC information referred to in paragraph (c) as is appropriate to the ML/TF risk of the customer.
- (4) If a reporting entity provides its designated services at or through a permanent establishment of the reporting entity in Australia, a reporting entity must take into account the following matters when identifying the ML/TF risk of the customer for the purposes of paragraph (3)(b):
- (a) the reporting entity’s ML/TF risk assessment;
 - (b) the kind of customer to whom the designated services will be provided;
-

- (c) the kinds of designated services provided, or proposed to be provided, by the reporting entity to the customer;
 - (d) the delivery channels by which the reporting entity's designated services are or will be provided to the customer;
 - (e) the countries with which the reporting entity deals, or will deal, in providing its designated services to the customer;
 - (f) the matters (if any) specified in the AML/CTF Rules.
- (5) Subsection (4) does not limit the matters a reporting entity may take into account for the purposes of paragraph (3)(b).
- (6) The AML/CTF Rules may do either or both of the following:
- (a) specify requirements that must be complied with for the purposes of establishing on reasonable grounds the matters in subsection (2);
 - (b) set out circumstances in which a reporting entity is taken to comply with a matter mentioned in that subsection.
- (7) Without limiting paragraph (2)(g) or (4)(f) or subsection (6), AML/CTF Rules made for the purposes of any of those provisions may make different provision in relation to different classes of customers, including:
- (a) customers in relation to whom simplified due diligence measures may be taken in accordance with section 31; and
 - (b) customers in relation to whom enhanced customer due diligence measures must be undertaken in accordance with section 32.
- Note: This subsection also does not limit subsection 13(3) of the *Legislation Act 2003* or subsection 33(3AB) of the *Acts Interpretation Act 1901*: see section 249.
- (8) Subsection (1) is a civil penalty provision.
- (9) A reporting entity that contravenes subsection (1) in relation to a customer commits a separate contravention of that subsection in respect of each designated service that the reporting entity provides to the customer at or through a permanent establishment of the reporting entity in Australia.
- (10) A reporting entity that contravenes subsection (1) in relation to a customer commits a separate contravention of that subsection on

each day that the reporting entity provides designated services to the customer at or through a permanent establishment of the reporting entity in a foreign country.

29 Exemptions from initial customer due diligence

Despite subsection 28(1), a reporting entity may commence to provide a designated service to a customer before the reporting entity complies with that subsection if:

- (a) circumstances specified in the AML/CTF Rules apply; and
- (b) the reporting entity determines on reasonable grounds that commencing to provide the designated service to the customer before subsection 28(1) is complied with in relation to the customer is essential to avoid interrupting the ordinary course of business; and
- (c) the reporting entity has AML/CTF policies to comply with subsection 28(1) in relation to the customer:
 - (i) as soon as reasonably practicable after commencing to provide the designated service to the customer; and
 - (ii) within the period (if any) specified in the AML/CTF Rules; and
- (d) the reporting entity determines on reasonable grounds that any additional risk of money laundering, terrorism financing or proliferation financing associated with complying with subsection 28(1) in relation to the customer after commencing to provide the designated service to the customer is low; and
- (e) the reporting entity implements AML/CTF policies to mitigate and manage the associated risks; and
- (f) the reporting entity complies with the requirements (if any) specified in the AML/CTF Rules.

Division 3—Ongoing customer due diligence

30 Undertaking ongoing customer due diligence

- (1) A reporting entity must monitor its customers in relation to the provision of its designated services to appropriately identify, assess, manage and mitigate the risks of money laundering,

financing of terrorism and proliferation financing that the reporting entity may reasonably face in providing designated services.

Note 1: See also section 31 (simplified customer due diligence).

Note 2: See also section 32 (enhanced customer due diligence).

Note 3: See section 36 for rules that apply to pre-commencement customers.

- (2) Without limiting subsection (1), if the reporting entity provides its designated services at or through a permanent establishment of the reporting entity in Australia, the reporting entity must:
- (a) monitor for unusual transactions and behaviours of customers that may give rise to a suspicious matter reporting obligation; and
 - (b) if the reporting entity has a business relationship with a customer—review and, where appropriate, update the reporting entity’s identification and assessment of the ML/TF risk of the customer in the following circumstances:
 - (i) if there is a significant change to any of the matters mentioned in subsection 28(4);
 - (ii) if there are unusual transactions and behaviours in relation to the customer that may give rise to a suspicious matter reporting obligation;
 - (iii) circumstances specified in the AML/CTF Rules; and
 - (c) if the reporting entity has a business relationship with a customer—review and, where appropriate, update and reverify KYC information relating to the customer at a frequency appropriate to the ML/TF risk of the customer, and if either of the following occur:
 - (i) the reporting entity has doubts about the adequacy or veracity of the KYC information relating to the customer;
 - (ii) circumstances specified in the AML/CTF Rules; and
 - (d) if the reporting entity has a business relationship with a customer that is a pre-commencement customer—monitor for significant changes in the nature and purpose of the business relationship that may result in the ML/TF risk of the customer being medium or high; and
 - (e) comply with any other requirements specified in the AML/CTF Rules.
-

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Note: For *suspicious matter reporting obligation*, see section 41.

- (3) The AML/CTF Rules may do either or both of the following:
 - (a) specify requirements that must be complied with in relation to the matters mentioned in subsection (2);
 - (b) set out circumstances in which a reporting entity is taken to comply with a matter mentioned in that subsection.
- (4) Without limiting subparagraph (2)(b)(iii) or (2)(c)(ii), paragraph (2)(e) or subsection (3), AML/CTF Rules made for the purposes of any of those provisions may make different provision in relation to different classes of customers, including:
 - (a) customers in relation to whom simplified due diligence measures may be taken in accordance with section 31; and
 - (b) customers in relation to whom enhanced customer due diligence measures must be undertaken in accordance with section 32.

Note: This subsection also does not limit subsection 13(3) of the *Legislation Act 2003* or subsection 33(3AB) of the *Acts Interpretation Act 1901*: see section 249.

- (5) For the purposes of this section, ***unusual transactions and behaviours*** of a customer include the following:
 - (a) unusually large or complex transactions relating to the customer;
 - (b) transactions and behaviours that are part of an unusual pattern of transactions and behaviours relating to the customer;
 - (c) transactions and behaviours that have no apparent economic or lawful purpose;
 - (d) transactions and behaviours that are inconsistent with what the reporting entity reasonably knows about any of the following:
 - (i) the customer;
 - (ii) the nature and purpose of the business relationship;
 - (iii) the ML/TF risk of the customer;
 - (iv) where relevant, the customer's source of funds or source of wealth.
- (6) Subsection (1) is a civil penalty provision.

- (7) A reporting entity that contravenes subsection (1) in relation to a customer commits a separate contravention of that subsection in respect of each designated service that the reporting entity provides to the customer at or through a permanent establishment of the reporting entity in Australia.
- (8) A reporting entity that contravenes subsection (1) in relation to a customer commits a separate contravention of that subsection on each day that the reporting entity provides designated services to the customer at or through a permanent establishment of the reporting entity in a foreign country.

Registered remittance affiliates

- (9) If an obligation is imposed by subsection (1) on a reporting entity in its capacity as a registered remittance affiliate of a registered remittance network provider, the obligation may be discharged by the registered remittance network provider.

Exemption

- (10) This section does not apply to a designated service covered by item 54 of table 1 in section 6.

Note: Item 54 of table 1 in section 6 covers a holder of an Australian financial services licence who arranges for a person to receive a designated service.

Division 4—Simplified and enhanced customer due diligence

31 Simplified customer due diligence

In complying with the obligation imposed on a reporting entity under subsection 28(1) or 30(1) in relation to a customer, the reporting entity may apply simplified customer due diligence measures if:

- (a) the ML/TF risk of the customer is low; and
- (b) section 32 does not apply to the customer; and
- (c) the reporting entity complies with the requirements specified in the AML/CTF Rules.

32 Enhanced customer due diligence obligation

In complying with the obligation imposed on a reporting entity under subsection 28(1) or 30(1) in relation to a customer, the reporting entity must apply enhanced customer due diligence measures appropriate to the ML/TF risk of the customer if one or more of the following apply to the customer:

- (a) the ML/TF risk of the customer is high;
- (b) if:
 - (i) a suspicious matter reporting obligation arises for the reporting entity in relation to the customer; and
 - (ii) the reporting entity proposes to continue to provide a designated service or designated services to the customer;
- (c) 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 foreign politically exposed person;
- (d) 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:
 - (i) an individual who is physically present in a high risk jurisdiction for which the international body known as the Financial Action Task Force has called for enhanced due diligence to be applied; or
 - (ii) a body corporate or legal arrangement that was formed in a high risk jurisdiction for which the international body known as the Financial Action Task Force has called for enhanced due diligence to be applied;
- (e) the designated service provided or proposed to be provided to the customer is provided or proposed to be provided as part of a nested services relationship;
- (f) the customer is of a kind specified in the AML/CTF Rules.

Note: For *suspicious matter reporting obligation*, see section 41.

8 Division 6 of Part 2

Repeal the Division, substitute:

Division 6—Pre-commencement customers

36 Pre-commencement customers

- (1) A customer of a reporting entity is a *pre-commencement customer* if:
 - (a) the reporting entity commenced before 12 December 2007 to provide a designated service covered by an item of table 1, 2 or 3 in section 6 of this Act to the customer; or
 - (b) the business relationship between the reporting entity and the customer involved the provision of only any of the following designated services in section 6 of this Act as at the start of 1 July 2026:
 - (i) designated services covered by item 2 of table 2 in section 6;
 - (ii) designated services covered by table 5 in section 6;
 - (iii) designated services covered by table 6 in section 6.
- (2) A pre-commencement customer of a reporting entity ceases to be a pre-commencement customer when the reporting entity complies with subsection 28(1) in relation to the customer.
- (3) Subsection 28(1) and paragraph 30(2)(b) do not apply in relation to a customer that is a pre-commencement customer.
- (4) However, subsection 28(1) applies in relation to a customer that is a pre-commencement customer if:
 - (a) a suspicious matter reporting obligation arises for the reporting entity in relation to the customer; or
 - (b) there is a significant change in the nature and purpose of the business relationship with the customer which results in the ML/TF risk of the customer being medium or high.

Note: For *suspicious matter reporting obligation*, see section 41.

9 Section 37 (heading)

Omit “**Applicable customer identification procedures**”, substitute “**Collection and verification of KYC information**”.

10 Subsection 37(1)

Omit “the carrying out by a reporting entity of an applicable customer identification procedure or an identity verification procedure”, substitute “a reporting entity complying with paragraphs 28(3)(c) and (d)”.

11 Subsection 37(1) (note)

Omit “carrying out the applicable customer identification procedures”, substitute “complying with paragraphs 28(3)(c) and (d)”.

12 Subsection 37(2)

Omit “carrying out applicable customer identification procedures or identity verification procedures”, substitute “complying with paragraphs 28(3)(c) and (d)”.

13 Subsection 37(3)

Omit “carrying out the applicable customer identification procedure or an identity verification procedure”, substitute “complying with paragraphs 28(3)(c) and (d)”.

14 Section 37A (heading)

Omit “**applicable customer identification procedures**”, substitute “**collection and verification of KYC information**”.

15 Paragraph 37A(1)(a)

Omit “applicable customer identification procedures”, substitute “the collection and verification of KYC information relating to a customer in accordance with paragraphs 28(3)(c) and (d)”.

16 Subsection 37A(2)

Omit “carried out the applicable customer identification procedure”, substitute “complied with paragraphs 28(3)(c) and (d)”.

17 Section 38 (heading)

Omit “**applicable customer identification procedures**”, substitute “**collection and verification of KYC information**”.

18 Paragraph 38(b)

Omit “carried out an applicable customer identification procedure”, substitute “complied with paragraph 28(3)(c) or (d)”.

19 Section 38

Omit “carried out the applicable customer identification procedure”, substitute “complied with paragraph 28(3)(c) or (d)”.

20 Subsection 39(6)

Omit “Division 6”, substitute “Divisions 3 and 4”.

21 Section 104 (paragraph (a))

Omit “applicable customer identification procedures it carries out or that it is taken to have carried out”, substitute “customer due diligence”.

22 Section 104 (paragraph (b))

Omit “applicable customer identification procedures”, substitute “the collection and verification of KYC information about a customer”.

23 Division 3 of Part 10 (heading)

Omit “the carrying out of identification procedures”, substitute “customer due diligence and other procedures”.

24 Sections 111 to 113

Repeal the sections, substitute:

111 Retention of records of customer due diligence

- (1) This section applies to a reporting entity if the reporting entity complies with section 28 (undertaking initial customer due diligence) or 30 (undertaking ongoing customer due diligence) in relation to a customer to whom the reporting entity provides a designated service, or proposed or proposes to provide a designated service.
- (2) The reporting entity must retain, until the end of the 7 year period that begins when the business relationship ends or the reporting entity completes the provision of the occasional transaction, records that:

- (a) are reasonably necessary to demonstrate compliance with the reporting entity’s obligations under Part 2; and
 - (b) are in the English language, or in a form in which the records are readily accessible and readily convertible into writing in the English language.
- (3) Without limiting paragraph (2)(a), the records must include:
- (a) sufficient and accurate records which demonstrate the type and content of the data collected by the reporting entity in relation to the customer for the purposes of complying with section 28 or 30; and
 - (b) records of any analysis, identification or assessment of ML/TF risk, or decision making, undertaken by the reporting entity in relation to the customer for the purposes of complying with section 28 or 30.
- (4) Subsection (2) is a civil penalty provision.

25 Section 114 (heading)

Omit “**identification procedures**”, substitute “**initial customer due diligence**”.

26 Paragraph 114(1)(b)

Omit “carried out an applicable customer identification procedure”, substitute “complied with paragraph 28(3)(c) or (d)”.

27 Section 135 (paragraph (c))

Omit “an applicable customer identification procedure”, substitute “customer due diligence under Part 2”.

28 Paragraph 138(1)(a)

Omit “an applicable customer identification procedure”, substitute “customer due diligence”.

29 Paragraph 138(1)(b)

Repeal the paragraph, substitute:

- (b) the customer due diligence is under section 28 (undertaking initial customer due diligence) or 30 (undertaking ongoing customer due diligence).

30 Subsection 138(2)

Omit “applicable customer identification procedure is under this Act”, substitute “customer due diligence is under section 28 or 30”.

31 Paragraph 138(3)(b)

Omit “an applicable customer identification procedure”, substitute “customer due diligence”.

32 Paragraph 138(3)(c)

Repeal the paragraph, substitute:

(c) the customer due diligence is under section 28 or 30.

33 Subsection 138(4)

Omit “applicable customer identification procedure is under this Act”, substitute “customer due diligence is under section 28 or 30”.

34 Subsection 184(4) (paragraph (a) of the definition of *designated infringement notice provision*)

Repeal the paragraph.

35 Subsection 184(4) (before paragraph (fl) of the definition of *designated infringement notice provision*)

Insert:

(fk) subsection 111(2) (which deals with retaining records relating to customer due diligence);

36 Paragraph 235(1)(c)

Repeal the paragraph, substitute:

(c) in complying with subsection 28(1) or 30(1); or

Part 2—Consequential amendments

Banking Act 1959

37 Subsection 16AH(7) (heading)

Omit “*section 32*”, substitute “*section 28*”.

38 Subsection 16AH(7)

Omit “Section 32”, substitute “Section 28”.

Commonwealth Electoral Act 1918

39 Subsection 90B(4) (table item 6, column headed “Person or organisation”, paragraph (b))

Omit “carries out applicable customer identification procedures under”, substitute “collects and verifies information relating to a customer in accordance with section 28 of”.

40 Subsection 90B(4) (table item 7, column headed “Person or organisation”)

Omit “carrying out of applicable customer identification procedures under”, substitute “collection or verification of information relating to a customer in accordance with section 28 of”.

41 Subsection 90B(10) (definition of *applicable customer identification procedure*)

Repeal the definition.

42 Subsection 91A(2D)

Omit “carry out an applicable customer identification procedure under”, substitute “collect and verify information relating to a customer in accordance with section 28 of”.

43 Subsection 91A(2E)

Omit “carrying out of an applicable customer identification procedure under”, substitute “collection or verification of information relating to a customer in accordance with section 28 of”.

44 Subsection 91A(3) (definition of *applicable customer identification procedure*)

Repeal the definition.

Schedule 3—Regulating additional high-risk services

Part 1—Real estate

Anti-Money Laundering and Counter-Terrorism Financing Act 2006

1 Section 5

Insert:

land includes:

- (a) land in Australia or a foreign country; and
- (b) land the subject of a subdivision arrangement.

land use entitlement means an entitlement to occupy land conferred through an ownership of shares in a company or units in a unit trust scheme, or a combination of a shareholding or ownership of units together with a lease or licence.

real estate means:

- (a) any of the following interests in land in Australia:
 - (i) a fee simple interest;
 - (ii) a leasehold interest;
 - (iii) a land use entitlement; or
- (b) an interest, estate, right or entitlement in land in a foreign country that:
 - (i) is equivalent to an interest mentioned in paragraph (a); or
 - (ii) otherwise confers ownership rights on the holder of that interest, estate; right or entitlement; or
- (c) an interest prescribed by the regulations;

but does not include the following:

- (d) incorporeal hereditaments;
- (e) the interest of a mortgagee;
- (f) a leasehold interest under a lease for a term (excluding options for further terms) of 30 years or less;

- (g) any other interest, estate, right or entitlement in land in a foreign country that is equivalent to an interest mentioned in paragraph (d), (e) or (f);
- (h) an interest prescribed by the regulations.

subdivision arrangement means:

- (a) an arrangement:
 - (i) under which the title (whether freehold or leasehold) to a portion of land is subdivided into separate freehold or leasehold titles relating to smaller portions of land within the first-mentioned portion; and
 - (ii) under which property that is common between the owners or occupiers of the smaller portions is owned or managed by a single body corporate (however described); and
 - (iii) that exists under a law, of the State or Territory in which the land is located, relating to “strata titles”, “community titles”, “unit titles”, “cluster titles” or something referred to by another term reflecting the features referred to in subparagraphs (i) and (ii); or
- (b) an arrangement under which:
 - (i) a body corporate owns an interest (whether freehold or leasehold) in land; and
 - (ii) under the constitution of the body corporate, a holder of shares in the body has, or may be granted, a right to occupy or use some or all of the land, whether the right is by way of a lease or licence or otherwise; or
- (c) an arrangement in relation to which all of the following subparagraphs apply:
 - (i) under the arrangement, an interest (whether freehold or leasehold) in land is held on trust;
 - (ii) under the terms of the trust, a holder of an interest in the trust has, or may be granted, a right to occupy or use part of the land, whether the right is by way of a lease or licence or otherwise;
 - (iii) the trustee of the trust is a body corporate;
 - (iv) there are at least 2 distinct parts of the land for which subparagraph (ii) is satisfied.

2 After subsection 6(5)

Insert:

Table 5—Real estate services

(5A) Table 5 is as follows:

Table 5—Real estate services		
Item	Provision of a designated service	Customer of the designated service
1	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	both: (a) the seller or transferor; and (b) the buyer or transferee
2	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	the buyer or transferee

Part 2—Dealers in precious metals and stones

Anti-Money Laundering and Counter-Terrorism Financing Act 2006

3 Section 5 (definition of *bullion*)

Repeal the definition, substitute:

bullion means gold, silver, platinum or palladium that:

- (a) is in the form of a bar, coin, ingot, plate, wafer or like form of mass; and
- (b) bears a mark or characteristic generally accepted as identifying and guaranteeing the fineness and quality of the gold, silver, platinum or palladium; and
- (c) is usually traded at a price that is determined by reference to the spot price of the gold, silver, platinum or palladium.

4 Section 5

Insert:

precious metal: see subsection 5A(1).

precious product: see subsection 5A(6).

precious stone: see subsection 5A(3).

5 After section 5

Insert:

5A Precious metal, precious stones and precious products

Precious metal

- (1) Each of the following substances is a ***precious metal***:
 - (a) gold;
 - (b) silver;
 - (c) platinum;

- (d) iridium;
 - (e) osmium;
 - (f) palladium;
 - (g) rhodium;
 - (h) ruthenium;
 - (i) a substance prescribed by the AML/CTF Rules;
 - (j) an alloy substance with at least 2% in weight of any of the substances mentioned in paragraphs (a) to (i).
- (2) For the purposes of subsection (1), it is immaterial whether the substance is in a manufactured or unmanufactured state.

Precious stones

- (3) A **precious stone** is a substance that:
- (a) has gem quality; and
 - (b) has market-recognised beauty, rarity and value.
- (4) For the purposes of subsection (3), it is immaterial whether the substance is natural, synthetic or reconstructed.
- (5) Without limiting subsection (3), each of the following substances is a kind of **precious stone**:
- (a) beryl;
 - (b) corundum;
 - (c) diamond;
 - (d) garnet;
 - (e) jadeite jade;
 - (f) opal;
 - (g) pearl;
 - (h) topaz;
 - (i) a substance prescribed by the AML/CTF Rules.

Precious products

- (6) A **precious product** is any of the following that is made up of, containing or having attached to it, any precious metal or precious stone, or both:
- (a) jewellery;

- (b) a watch;
- (c) an object of personal adornment not otherwise covered by paragraph (a) or (b);
- (d) an article of goldsmiths' or silversmiths' wares.

Examples: A stainless steel watch with rubies set on the watch face, a platinum tie bar or a gold and pearl necklace.

(7) In subsection (6):

goldsmiths' or silversmiths' wares include such articles as ornaments, tableware, smokers' requisites and other articles of personal, household, office or religious use.

6 Subsection 6(3)

Repeal the subsection, substitute:

Table 2—Bullion and precious metals, stones and products

(3) Table 2 is as follows:

Item	Provision of a designated service	Customer of the designated service
1	buying or selling bullion, where the buying or selling is in the course of carrying on a bullion-dealing business	the buyer or the seller (as the case may be)
2	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;	the buyer or the seller (as the case may be)

Schedule 3 Regulating additional high-risk services
Part 2 Dealers in precious metals and stones

Table 2—Bullion and precious metals, stones and products

Item	Provision of a designated service	Customer of the designated service
	(b) precious stones; (c) precious products; (d) any combination of any 2 or more of the items referred to in paragraphs (a) to (c)	

Part 3—Professional services

Anti-Money Laundering and Counter-Terrorism Financing Act 2006

7 Section 5 (definition of exempt legal practitioner service)

Repeal the definition.

8 Section 5

Insert:

express trust means a trust expressly and intentionally created in writing by a settlor but does not include a testamentary trust.

legal arrangement means:

- (a) an express trust; or
- (b) a partnership; or
- (c) a joint venture; or
- (d) an unincorporated association; or
- (e) an arrangement, including a foreign arrangement such as a fiducie, treuhand or fideicomiso, similar to an arrangement mentioned in any of the above paragraphs.

nominee shareholder, in relation to a body corporate or legal arrangement, means a person who:

- (a) holds shares or an interest in the body corporate or legal arrangement on behalf of another person (the ***nominator***); and
- (b) exercises voting rights associated with the shares or interest according to the instructions of the nominator, or receives dividends on behalf of the nominator, or both.

9 Subsection 6(2) (table item 46, column headed “Provision of a designated service”, paragraph (b))

Repeal the paragraph, substitute:

- (b) the service is not specified in the AML/CTF Rules

10 Before subsection 6(6)

Insert:

Table 6—Professional services

(5B) Table 6 is as follows:

Table 6—Professional services		
Item	Provision of a designated service	Customer of the designated service
1	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, buy or otherwise transfer real estate, where: (a) the service is provided in the course of carrying on a business; and (b) the sale, purchase or other transfer is not pursuant to, or resulting from, an order of a court or tribunal	the person
2	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, buy or otherwise transfer a body corporate or legal arrangement, where: (a) the service is provided in the course of carrying on a business; and (b) the sale, purchase or other transfer is not pursuant to, or resulting from, an order of a court or tribunal	the person
3	receiving, holding and controlling (including disbursing) or managing a person's:	the person

Table 6—Professional services

Item	Provision of a designated service	Customer of the designated service
	<ul style="list-style-type: none"> (a) money; or (b) accounts; or (c) securities and securities accounts; or (d) virtual assets; or (e) other property; <p>as part of assisting the person in the planning or execution of a transaction, or otherwise acting for or on behalf of a person in a transaction, in the course of carrying on a business (other than in a circumstance covered by subsection (5C))</p>	
4	<p>assisting a person in organising, planning or executing a transaction, or otherwise acting for or on behalf of a person in a transaction, for equity or debt financing relating to:</p> <ul style="list-style-type: none"> (a) a body corporate (or proposed body corporate); or (b) a legal arrangement (or proposed legal arrangement); <p>in the course of carrying on a business</p>	the person
5	<p>selling or transferring a shelf company, in the course of carrying on a business</p>	the buyer or transferee
6	<p>assisting a person to plan or execute, or otherwise acting on behalf of a person in, the creation or restructuring of:</p> <ul style="list-style-type: none"> (a) a body corporate (other than a corporation under the <i>Corporations (Aboriginal and Torres Strait Islander) Act</i> 	<p>the person and:</p> <ul style="list-style-type: none"> (a) if the body corporate is a company and the service is creating the company—the beneficial owners and directors of the company; or (b) if the legal arrangement is an express trust and the service is

Schedule 3 Regulating additional high-risk services
Part 3 Professional services

Table 6—Professional services

Item	Provision of a designated service	Customer of the designated service
	2006); or (b) a legal arrangement; in the course of carrying on a business	creating the express trust—the trustee, settlor and beneficiaries of the trust
7	acting as, or arranging for another person to act as, any of the following, on behalf of a person (the <i>nominator</i>), in the course of carrying on a business: (a) a director or secretary of a company; (b) a power of attorney of a body corporate or legal arrangement; (c) a partner in a partnership; (d) a trustee of an express trust; (e) a position in any other legal arrangement that is functionally equivalent to a position mentioned in any of the above paragraphs; other than in a circumstance covered by subsection (5E)	the nominator
8	acting as, or arranging for another person to act as, a nominee shareholder of a body corporate or legal arrangement, on behalf of a person (the <i>nominator</i>), in the course of carrying on a business	the nominator
9	providing a registered office address or principal place of business address of a body corporate or legal arrangement, in the course of carrying on a business	the person to whom the service is provided

(5C) For the purposes of item 3 of the table in subsection (5B), the
 circumstances are as follows:

- (a) the money, accounts, securities, securities accounts, virtual assets or other property being held or managed is payment by the person for the provision of goods or services by the business;
- (b) both:
 - (i) the business does not provide any designated services other than the services referred to in item 3 of the table in subsection (5B); and
 - (ii) the money, accounts, securities, securities accounts, virtual assets or other property being held or managed is for payments reasonably incidental to the provision by the business of a service that is not a designated service;
- (c) the money, accounts, securities, securities accounts, virtual assets or other property being held or managed is to be received or payable under an order of a court or tribunal;
- (d) the service provided by the business is the receipt or disbursement of a payment mentioned in subsection (5D);
- (e) the service is any other designated service;
- (f) a circumstance specified in the AML/CTF Rules.

Note: An example of a circumstance to which paragraph (b) applies is fees paid to a barrister for representation in legal proceedings or property management services.

(5D) For the purposes of paragraph (5C)(d), the payments are:

- (a) a payment to or from any of the following:
 - (i) a government body;
 - (ii) a court or tribunal of the Commonwealth, a State, a Territory or a foreign country;
 - (iii) a public international organisation;
 - (iv) a person who is licensed under a law of the Commonwealth, a State or a Territory to provide insurance, including self-insured licensees; or
- (b) a payment of a kind specified in the AML/CTF Rules.

(5E) For the purposes of item 7 of the table in subsection (5B), the circumstances are:

- (a) acting, or arranging for another person to act, in a fiduciary capacity pursuant to, or as a result of, an order of a court or a tribunal; or

- (b) acting as the trustee of a regulated debtor's estate (within the meaning of Schedule 2 to the *Bankruptcy Act 1966*); or
- (c) a circumstance specified in the AML/CTF Rules.

10A Before subsection 6(7)

Insert:

Services provided by barristers on instructions of a solicitor

- (6B) Despite anything in this section, 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.

Part 4—Transitional provisions

11 Delayed application of certain provisions of this Act

- (1) The following provisions of the *Anti-Money Laundering and Counter-Terrorism Financing Act 2006* do not apply, until 1 July 2026, to a reporting entity in its capacity as an entity that provides a designated service covered by item 2 of table 2, or an item of table 5 or 6, in section 6 of that Act:
 - (a) Part 1A (which deals with AML/CTF programs);
 - (b) Part 2 (which deals with customer due diligence);
 - (c) Part 3 (which deals with reporting obligations);
 - (d) Divisions 2 to 6 of Part 10 (which deal with record keeping).
- (2) Subject to anything else in this Act or in rules made under Schedule 12 to this Act (which deals with transitional rules), the remaining provisions of the *Anti-Money Laundering and Counter-Terrorism Financing Act 2006* apply, on and after the commencement of this item, to such a reporting entity.

12 Application provision—timing of enrolment

- (1) This item applies to a person if:
 - (a) the person provides, or commences to provide, a designated service covered by item 2 of table 2, or an item of table 5 or 6, in section 6 of the *Anti-Money Laundering and Counter-Terrorism Financing Act 2006* at any time before 1 July 2026; and
 - (b) the person does not, as at that time, provide, or commence to provide, any other designated services.
- (2) Subsection 51B(1) of the *Anti-Money Laundering and Counter-Terrorism Financing Act 2006* applies to the person, in relation to the designated service referred to in paragraph (1)(a) of this item, as if the reference in that subsection to 28 days after the day on which the person commences to provide the designated service were a reference to 29 July 2026.

Schedule 4—Legal professional privilege

Anti-Money Laundering and Counter-Terrorism Financing Act 2006

1 Section 5

Insert:

legal professional privilege includes privilege under Division 1 of Part 3.10 of the *Evidence Act 1995*.

LPP form, in relation to information or a document, means a written notice that:

- (a) is in an approved form; and
- (b) specifies the basis on which the information or document is privileged from being given or produced on the ground of legal professional privilege; and
- (c) contains any other information required by the approved form; and
- (d) is accompanied by any documents required by the approved form.

2 After subsection 26Q(2)

Insert:

(2A) If:

- (a) a person is given a notice under subsection (1) in relation to one or more documents; and
- (b) the person reasonably believes that the documents are privileged from being produced on the ground of legal professional privilege;

the person must give the AUSTRAC CEO an LPP form in relation to the documents within the period specified in the request.

Note: For other provisions dealing with legal professional privilege, see sections 242 and 242A.

3 Subsection 26Q(3)

Repeal the subsection, substitute:

(3) Subsections (2) and (2A) are civil penalty provisions.

4 Paragraph 41(2)(a)

After “applies”, insert “and paragraph (aa) of this subsection does not apply”.

5 After paragraph 41(2)(a)

Insert:

(aa) if:

- (i) paragraph (1)(d), (e), (f), (i) or (j) applies; and
- (ii) the reporting entity reasonably believes that some (but not all) of the information required to be contained in the report may be privileged from being given on the ground of legal professional privilege; and
- (iii) the privilege, if it exists, belongs to a person other than the reporting entity;

5 business days after the day on which the reporting entity forms the relevant suspicion; or

6 After subsection 41(2)

Insert:

(2A) Despite subsection (2), the reporting entity may refuse to give the AUSTRAC CEO a report about the matter if the reporting entity reasonably believes that all of the information comprising the grounds on which the reporting entity holds the relevant suspicion is privileged from being given on the ground of legal professional privilege.

Note: For other provisions dealing with legal professional privilege, see sections 242 and 242A.

7 After paragraph 41(3)(a)

Insert:

- (aa) if the reporting entity reasonably believes that some (but not all) of the information required to be contained in the report about the matter is privileged from being given on the ground of legal professional privilege—be accompanied by an LPP form in relation to the information; and

8 At the end of subsection 41(3)

Add:

Note 3: For other provisions dealing with legal professional privilege, see sections 242 and 242A.

9 After paragraph 43(3)(a)

Insert:

- (aa) if the reporting entity reasonably believes that information required to be contained in the report about the transaction is privileged from being given on the ground of legal professional privilege—be accompanied by an LPP form in relation to the information; and

10 At the end of subsection 43(3)

Add:

Note 3: For other provisions dealing with legal professional privilege, see sections 242 and 242A.

11 Subsection 49(3)

Repeal the subsection, substitute:

- (3) Subsections (2) and (4) are civil penalty provisions.

Legal professional privilege

(4) If:

- (a) a person is given a notice under subsection (1) in relation to information or a document; and
(b) the person reasonably believes that the information or document is privileged from being given or produced on the ground of legal professional privilege;

the person must give the AUSTRAC CEO an LPP form in relation to the information or document within the period specified in the notice.

Note: For other provisions dealing with legal professional privilege, see sections 242 and 242A.

12 Before paragraph 49B(5)(a)

Insert:

(aa) subsection (6A);

13 After subsection 49B(6)

Insert:

Legal professional privilege

(6A) If:

- (a) a person is given a notice under subsection (2) in relation to information or a document; and
- (b) the person reasonably believes that the information or document is privileged from being given or produced on the ground of legal professional privilege;

the person must give the AUSTRAC CEO an LPP form in relation to the information or document within the period specified in the notice.

Note: For other provisions dealing with legal professional privilege, see sections 242 and 242A.

14 Subsection 49B(7)

Repeal the subsection, substitute:

(7) Subsections (6) and (6A) are civil penalty provisions.

15 After paragraph 50(6)(a)

Insert:

- (aa) if the reporting entity reasonably believes that information relating to the matter is privileged from being given on the ground of legal professional privilege—be accompanied by an LPP form in relation to the information; and

16 Subsection 50(6) (note)

Omit “Note”, substitute “Note 1”.

17 At the end of subsection 50(6)

Add:

Note 2: For other provisions dealing with legal professional privilege, see sections 242 and 242A.

18 At the end of section 75N

Add:

(3) If:

- (a) a person is given a request under subsection (1) in relation to information; and
- (b) the person reasonably believes that the information is privileged from being given on the ground of legal professional privilege;

the person must give the AUSTRAC CEO an LPP form in relation to the information within the period specified in the request.

(4) Subsection (3) is a civil penalty provision.

Note: For other provisions dealing with legal professional privilege, see sections 242 and 242A.

19 At the end of section 76Q

Add:

(3) If:

- (a) a person is given a request under subsection (1) in relation to information; and
- (b) the person reasonably believes that the information is privileged from being given on the ground of legal professional privilege;

the person must give the AUSTRAC CEO an LPP form in relation to the information within the period specified in the request.

(4) Subsection (3) is a civil penalty provision.

Note 1: For other provisions dealing with legal professional privilege, see sections 242 and 242A.

20 Subsection 167(4) (at the end of the heading)

Add “*etc.*”.

21 After paragraph 167(4)(a)

Insert:

- (aa) subsection (5);
- (ab) subsection (6);

22 At the end of section 167

Add:

Legal professional privilege

(5) If:

- (a) a person is given a notice under subsection (2) in relation to information, a document or a copy of a document; and
- (b) the person reasonably believes that the information, document or copy is privileged from being given or produced on the ground of legal professional privilege;

the person must give the AUSTRAC CEO an LPP form in relation to the information, document or copy within the period specified in the notice.

(6) Subsection (5) is a civil penalty provision.

Note: For other provisions dealing with legal professional privilege, see sections 242 and 242A.

23 Subsection 184(4) (after paragraph (ae) of the definition of *designated infringement notice provision*)

Insert:

- (af) subsection 26Q(2A) (which deals with providing an LPP form in relation to certain further information requested);

24 Subsection 184(4) (after paragraph (f) of the definition of *designated infringement notice provision*)

Insert:

- (fa) subsection 49(4) (which deals with providing an LPP form in relation to information or documents requested);

25 Subsection 184(4) (after paragraph (fb) of the definition of *designated infringement notice provision*)

Insert:

- (fc) subsection 49B(6A) (which deals with providing an LPP form in relation to information or documents requested);

- (fd) subsection 50(4) (which deals with providing certain reports about a card issuer's response, or lack of response to the AUSTRAC CEO);
- (fe) subsection 50(5) (which deals with providing certain reports about a card issuer's response, or lack of response to the Commissioner of Taxation);

26 Subsection 184(4) (after paragraph (fh) of the definition of *designated infringement notice provision*)

Insert:

- (fi) subsection 75N(3) (which deals with providing an LPP form in relation to certain further information requested);
- (fj) subsection 76Q(3) (which deals with providing an LPP form in relation to certain further information requested);

27 At the end of subsection 184(4) (at the end of the definition of *designated infringement notice provision*)

Add:

- ; (i) subsection 167(5) (which deals with providing an LPP form in relation to certain information or documents to be provided to an authorised officer);
- (j) subsection 202(5) (which deals with reporting entities providing an LPP form in relation to certain information or documents requested by notice).

28 At the end of section 202

Add:

(5) If:

- (a) a person is given a notice under subsection (2) in relation to information or a document; and
- (b) the person reasonably believes that the information or document is privileged from being given or produced on the ground of legal professional privilege;

the person must give the AUSTRAC CEO an LPP form in relation to the information or document within the period specified in the notice.

(6) Subsection (5) is a civil penalty provision.

Note: For other provisions dealing with legal professional privilege, see sections 242 and 242A.

29 After paragraph 203(e)

Insert:

- (ea) set out the effect of subsections 202(5) and (6) (information or documents privileged from being given or produced on the ground of legal professional privilege); and

30 Section 242

Repeal the section, substitute:

242 Legal professional privilege

- (1) Nothing in this Act affects the right of a person to refuse to give information (including by answering a question) or produce a document if:
 - (a) the information would be privileged from being given on the ground of legal professional privilege; or
 - (b) the document would be privileged from being produced on the ground of legal professional privilege.
- (2) The fact that a person has provided a description of information or documents that may be or are privileged from being given or produced on the ground of legal professional privilege does not, of itself, amount to a waiver of the privilege.

242A Guidelines in relation to legal professional privilege

- (1) The Minister may, by notifiable instrument, make guidelines in relation to making or dealing with claims or assertions of legal professional privilege in relation to information or documents required to be given under or for the purposes of this Act.
- (2) Without limiting subsection (1), the guidelines may deal with the following matters:
 - (a) arrangements for making or dealing with claims or assertions of legal professional privilege in relation to the exercise of other powers under this Act, including the use of LPP forms;

Schedule 5—Tipping off offence and disclosure of AUSTRAC information to foreign countries or agencies

Part 1—Main amendments

Division 1—Tipping off offence

Anti-Money Laundering and Counter-Terrorism Financing Act 2006

1 Section 5

Repeal the following definitions:

- (a) definition of *AGO*;
- (b) definition of *ASD*;
- (c) definition of *ASIO*;
- (d) definition of *ASIS*;
- (e) definition of *Attorney-General’s Department*;
- (f) definition of *corporate group*;
- (g) definition of *Department of Foreign Affairs and Trade*;
- (h) definition of *DIO*;
- (i) definition of *ONI*.

2 Section 123

Repeal the section, substitute:

123 Offence of tipping off

Offence

- (1) A person commits an offence if:
 - (a) the person is or has been:
 - (i) a reporting entity; or
 - (ii) an officer, employee or agent of a reporting entity; or

Schedule 5 Tipping off offence and disclosure of AUSTRAC information to foreign countries or agencies

Part 1 Main amendments

- (iii) required by a notice under subsection 49(1) to give information or produce documents; or
- (iv) required by notice under subsection 49B(2) to give information or produce documents; and
- (b) the person discloses information to another person (other than an AUSTRAC entrusted person); and
- (c) the information is covered by subsection (2); and
- (d) the disclosure of the information would or could reasonably be expected to prejudice an investigation:
 - (i) of an offence against a law of the Commonwealth or of a State or Territory; or
 - (ii) for the purposes of the *Proceeds of Crime Act 2002* or regulations under that Act; or
 - (iii) for the purposes of a law of a State or Territory that corresponds to the *Proceeds of Crime Act 2002* or regulations under that Act.

Penalty: Imprisonment for 2 years or 120 penalty units, or both.

- (2) Information is covered by this subsection if it is any of the following:
 - (a) that a reporting entity has given, or is required to give, a report under subsection 41(2);
 - (b) a report given under, or prepared for the purposes of, subsection 41(2);
 - (c) a copy of such a report;
 - (d) a document purporting to set out information (including the formation or existence of a suspicion) contained in such a report;
 - (e) a person is or has been required by a notice under subsection 49(1) to give information or produce a document;
 - (f) a person has given information or produced a document in response to a notice under subsection 49(1);
 - (g) a person is or has been required by a notice under subsection 49B(2) to give information or produce a document;
 - (h) a person has given information or produced a document in response to a notice under subsection 49B(2);

- (i) information referred to in paragraph 16(5A)(a), (b) or (c) or (5AA)(a) or (b) of the *Financial Transaction Reports Act 1988*, as in force immediately before its repeal.
- (3) For the purposes of paragraph (1)(d), it is immaterial whether an investigation has commenced.

Exception—crime prevention

- (4) Subsection (1) does not apply to the disclosure of information covered by paragraphs (2)(a), (b), (c) or (d) by a person if:
 - (a) the person is a reporting entity, or an officer, employee or agent of a reporting entity, that is:
 - (i) a legal practitioner (however described); or
 - (ii) a partnership or company that carries on a business of using legal practitioners (however described) to supply professional legal services; or
 - (iii) a qualified accountant; or
 - (iv) a partnership or company that carries on a business of using qualified accountants to supply professional accountancy services; or
 - (v) a person specified in the AML/CTF Rules; and
 - (b) the information relates to the affairs of a customer of the reporting entity; and
 - (c) the person makes the disclosure, in good faith, for the purposes of dissuading the customer from engaging in conduct that constitutes, or could constitute, an offence against a law of the Commonwealth or of a State or Territory.

Note: A defendant bears an evidential burden in relation to the matter in subsection (4) (see subsection 13.3(3) of the *Criminal Code*).

Exception—information sharing to detect, deter or disrupt money laundering, the financing of terrorism, proliferation financing, or other serious crimes

- (5) Subsection (1) does not apply if:
 - (a) the disclosure is made to another reporting entity; and
 - (b) the disclosure is made for the purpose of detecting, deterring, or disrupting money laundering, the financing of terrorism, proliferation financing, or other serious crimes; and

(c) the conditions prescribed by the regulations are met.

Note: A defendant bears an evidential burden in relation to the matter in subsection (5) (see subsection 13.3(3) of the *Criminal Code*).

Courts and Tribunals

(6) Except where it is necessary to do so for the purposes of giving effect to this Act, a person is not to be required to disclose to a court or tribunal information mentioned in subsection (2).

Division 2—Disclosure of AUSTRAC information to foreign countries or agencies

Anti-Money Laundering and Counter-Terrorism Financing Act 2006

3 Paragraph 126(2)(a)

Repeal the paragraph, substitute:

(a) both of the following apply:

- (i) the making of the record, disclosure or use is for the purposes of, or in connection with, the performance or exercise of the person’s functions, duties or powers as an official of a Commonwealth, State or Territory agency;
- (ii) the disclosure is not to the government of a foreign country or to a foreign agency; or

4 Paragraph 127(2)(a)

Omit “referred to in subsection (3)”, substitute “prescribed by the AML/CTF Rules”.

5 Subsection 127(3)

Repeal the subsection.

6 Subsection 127(4)

Omit “referred to in subsection (3)”, substitute “prescribed by the AML/CTF Rules for the purposes of paragraph 127(2)(a)”.

Part 2—Contingent amendments

Intelligence Services Legislation Amendment Act 2024

7 Item 94 of Schedule 1

Repeal the item.

Schedule 6—Services relating to virtual assets

Part 1—Main amendments

Anti-Money Laundering and Counter-Terrorism Financing Act 2006

1 Section 4

Omit “digital currency exchange”, substitute “virtual asset”.

2 Section 5 (paragraph (a) of the definition of *betting instrument*)

Omit “digital currency”, substitute “virtual asset”.

3 Section 5

Insert:

casino means a casino operating under a licence granted under a law of a State or a Territory.

4 Section 5 (definition of *digital currency*)

Repeal the definition.

5 Section 5 (definition of *Digital Currency Exchange Register*)

Repeal the definition.

6 Section 5 (definition of *property*)

Omit “digital currency”, substitute “a virtual asset”.

7 Section 5 (definition of *registered digital currency exchange provider*)

Repeal the definition.

8 Section 5

Insert:

registered virtual asset service provider means a person registered under section 76E as a virtual asset service provider.

9 Section 5 (definition of *registrable digital currency exchange service*)

Repeal the definition.

10 Section 5

Insert:

registrable virtual asset service means a designated service that:

- (a) is either of the following:
 - (i) a designated service covered by item 46A, 50A, 50B or 50C of table 1 in section 6;
 - (ii) a designated service covered by item 29 or 30 of that table, if the transfer of value involves the transfer of a virtual asset (whether or not it also involves the transfer of money or property); and
- (b) is not provided by a financial institution or a casino; and
- (c) is not of a kind specified in the AML/CTF Rules.

11 Section 5 (paragraph (b) of the definition of *registration*)

Omit “digital currency exchange”, substitute “virtual asset service”.

12 Section 5 (definition of *stored value card*)

Repeal the definition, substitute:

stored value card means a thing (whether real or virtual):

- (a) that stores monetary value other than physical currency; or
 - (b) that gives access to monetary value stored in a form other than physical currency; or
 - (c) that is prescribed by the AML/CTF Rules;
- but does not include:
- (d) a debit card or a credit card; or
 - (e) an account for the purposes of items 1 to 3 of table 1 in section 6 or items 11 to 13 of table 3 in section 6; or
 - (f) unless prescribed by the AML/CTF Rules for the purposes of paragraph (c):

- (i) a thing that is intended to give access to monetary value in a debit card or credit card account; or
- (ii) a gaming chip or token, or a betting instrument; or
- (iii) a virtual asset (whether or not pegged to any currency); or
- (iv) a thing that stores, or gives access to, virtual assets (whether or not pegged to any currency); or
- (v) a card or other thing that is only used to store or access monetary value for the purposes of purchasing an entry into a lottery or redeeming winnings in respect of a lottery, where the monetary value is denominated in a currency, or is pegged by its issuer to a currency, stored in a form other than physical currency; or
- (g) a thing that, under the AML/CTF Rules, is taken not to be a stored value card.

13 Section 5 (subparagraph (ca)(i) of the definition of *threshold transaction*)

Omit “digital currency”, substitute “a virtual asset”.

14 Section 5 (paragraph (ca) of the definition of *threshold transaction*)

After “amount” (wherever occurring), insert “or value”.

15 Section 5 (note 2 to the definition of *threshold transaction*)

Omit “digital currency”, substitute “virtual assets”.

16 Section 5

Insert:

virtual asset has the meaning given by section 5B.

virtual asset safekeeping service:

- (a) means 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

(whether or not there are also other parties to any such arrangement); but

- (b) does not include a service of a kind prescribed by the AML/CTF Rules.

Virtual Asset Service Provider Register has the meaning given by section 76B.

17 Before section 6

Insert:

5B Meaning of *virtual asset*

- (1) A *virtual asset* is a digital representation of value that:
 - (a) functions as any of the following:
 - (i) a medium of exchange;
 - (ii) a store of economic value;
 - (iii) a unit of account;
 - (iv) an investment; and
 - (b) is not issued by or under the authority of a government body; and
 - (c) may be transferred, stored or traded electronically.
- (2) A *virtual asset* is a digital representation of value that:
 - (a) enables a person to vote on the management, administration or governance of arrangements connected with a digital representation of value; and
 - (b) is not issued by or under the authority of a government body; and
 - (c) may be transferred, stored or traded electronically.
- (3) A *virtual asset* is a digital representation of value of a kind prescribed by the AML/CTF Rules.
- (4) However, the following are not *virtual assets*:
 - (a) money;
 - (b) a digital representation of value used exclusively within an electronic game;
 - (c) customer loyalty or reward points;

Schedule 6 Services relating to virtual assets
Part 1 Main amendments

- (d) a digital representation of value that is:
 - (i) similar to a thing mentioned in paragraph (b) or (c); and
 - (ii) not intended by the issuer to be convertible into another digital representation of value or money;
- (e) a digital representation of value prescribed by the AML/CTF Rules.

18 Subsection 6(2) (after table item 46)

Insert:

- | | | |
|-----|--|-----------------------------|
| 46A | 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 | the customer of the service |
|-----|--|-----------------------------|

19 Subsection 6(2) (table item 50A)

Repeal the table item, substitute:

- | | | |
|-----|--|--|
| 50A | exchanging, or making arrangements for the exchange of: <ul style="list-style-type: none">(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 | the person whose virtual asset or money is exchanged |
|-----|--|--|

20 Subsection 6(2) (after table item 50A)

Insert:

-
- | | | |
|-----|--|---|
| 50B | 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 | the person whose virtual asset is exchanged |
|-----|--|---|
-
- | | | |
|-----|--|------------------------------------|
| 50C | providing a designated service mentioned in another item of this | the customer mentioned in the item |
|-----|--|------------------------------------|
-

table 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

21 Subsection 6(4) (cell at table item 7, column headed “Provision of a designated service”)

Omit “digital currency”, substitute “virtual assets”.

22 Subsection 6(4) (cell at table item 7, column headed “Customer of the designated service”)

Omit “digital currency is”, substitute “virtual assets are”.

23 Subsection 6(4) (cell at table item 8, column headed “Provision of a designated service”)

Omit “digital currency”, substitute “virtual assets”.

24 Section 19

Repeal the section, substitute:

19 Translation of virtual assets to Australian currency

In determining, for the purposes of this Act, whether the value of a virtual asset is not less than an Australian dollar amount, the value of the virtual asset is to be translated to Australian currency in accordance with the method specified in the AML/CTF Rules.

25 Part 6A (heading)

Omit “Digital Currency Exchange”, substitute “Virtual Asset Service Provider”.

26 Section 76

Omit “digital currency exchange” (wherever occurring), substitute “virtual asset”.

27 Section 76

Omit “Digital Currency Exchange”, substitute “Virtual Asset Service Provider”.

28 Division 2 of Part 6A (heading)

Omit “digital currency exchange”, substitute “virtual asset”.

29 Section 76A (heading)

Omit “digital currency exchange”, substitute “virtual asset”.

30 Subsection 76A(1)

Repeal the subsection, substitute:

Registrable virtual asset services

- (1) A person (the *first person*) must not provide a registrable virtual asset service to another person if the first person is not a registered virtual asset service provider.

31 Subsection 76A(2)

Omit “digital currency exchange”, substitute “virtual asset service”.

32 Section 76B (heading)

Omit “Digital Currency Exchange”, substitute “Virtual Asset Service Provider”.

33 Subsections 76B(1), (2) and (3)

Omit “Digital Currency Exchange”, substitute “Virtual Asset Service Provider”.

34 Subsection 76B(4)

Omit “Digital Currency Exchange” (wherever occurring), substitute “Virtual Asset Service Provider”.

35 Section 76C (heading)

Omit “Digital Currency Exchange”, substitute “Virtual Asset Service Provider”.

36 Section 76C

Omit “Digital Currency Exchange”, substitute “Virtual Asset Service Provider”.

37 Subsection 76D(1)

Omit “digital currency exchange”, substitute “virtual asset service”.

38 Paragraph 76G(2)(a)

Omit “digital currency”, substitute “virtual assets”.

39 Paragraph 76G(2)(b)

Omit “volume of digital currency”, substitute “volume of virtual assets”.

40 Paragraph 76G(2)(b)

Omit “digital currency”, substitute “virtual asset”.

41 Paragraph 76G(2)(c)

Omit “digital currencies”, substitute “virtual assets”.

42 Paragraph 76G(2)(d)

Omit “digital currency”, substitute “virtual assets”.

43 Paragraph 76H(1)(b)

Omit “Digital Currency Exchange”, substitute “Virtual Asset Service Provider”.

44 Subsection 76J(2)

Omit “digital currency exchange”, substitute “virtual asset”.

45 Paragraphs 76K(2)(d) and 76L(2)(d)

Omit “Digital Currency Exchange”, substitute “Virtual Asset Service Provider”.

46 Section 76M (heading)

Omit “Digital Currency Exchange”, substitute “Virtual Asset Service Provider”.

47 Subsection 76M(1)

Omit “digital currency exchange”, substitute “virtual asset service”.

48 Subsections 76M(1), (2) and (3)

Omit “Digital Currency Exchange”, substitute “Virtual Asset Service Provider”.

49 Section 76R

Omit “Digital Currency Exchange”, substitute “Virtual Asset Service Provider”.

50 Subsections 142(1) and (2)

Omit “digital currency”, substitute “virtual asset”.

51 Paragraph 142(3)(a)

Omit “digital currency”, substitute “virtual asset”.

52 Paragraph 184(1A)(e)

Omit “digital currency exchange”, substitute “virtual asset”.

53 Paragraph 228A(2)(c)

Omit “Digital Currency Exchange”, substitute “Virtual Asset Service Provider”.

54 Section 233B (table item 3A)

Omit “digital currency exchange”, substitute “virtual asset service”.

Part 2—Contingent amendments

Proceeds of Crime Act 2002

55 Section 338 (paragraph (ea) of the definition of *account*)

Repeal the paragraph, substitute:

- (ea) an account relating to a *virtual asset, including:
 - (i) an account representing an amount, or the value, of a virtual asset; and
 - (ii) an account provided as part of a *registrable virtual asset service.

56 Section 338 (paragraph (h) of the definition of *account*)

Repeal the paragraph, substitute:

- (h) in the case of an account relating to a virtual asset—the balance of the account is expressed as an amount, or the value, of the virtual asset, or an amount of Australian currency or any other currency.

57 Section 338 (definitions of *digital currency* and *digital currency exchange*)

Repeal the definitions.

58 Section 338 (paragraph (i) of the definition of *financial institution*)

Omit “*digital currency exchange”, substitute “*registrable virtual asset service”.

59 Section 338

Insert:

registrable virtual asset service has the meaning given by the *Anti-Money Laundering and Counter-Terrorism Financing Act 2006*.

virtual asset has the meaning given by the *Anti-Money Laundering and Counter-Terrorism Financing Act 2006*.

Schedule 7—Definition of bearer negotiable instrument

Anti-Money Laundering and Counter-Terrorism Financing Act 2006

1 Section 17

Repeal the section, substitute:

17 Bearer negotiable instruments

- (1) A *bearer negotiable instrument* is an instrument that is one of the following that is payable to bearer:
 - (a) a bill of exchange;
 - (b) a cheque;
 - (c) a promissory note;
 - (d) a bearer bond;
 - (e) a traveller's cheque;
 - (f) a money order, postal order or similar order;
 - (g) a negotiable instrument not covered by any of the above paragraphs.
- (2) Without limiting subsection (1), an instrument is payable to bearer if the instrument:
 - (a) is endorsed without restriction; or
 - (b) does not express a payee; or
 - (c) is payable to a fictitious person; or
 - (d) is otherwise in such form that title to the instrument passes on delivery.

Schedule 8—Transfers of value and international value transfer services

Part 1—Transfers of value

Anti-Money Laundering and Counter-Terrorism Financing Act 2006

1 Section 4

Omit “Electronic funds transfer instructions”, substitute “Transfers of value”.

2 Section 4

Omit “transferred money”, substitute “transferred value”.

3 Section 4

Omit “registrable designated remittance services”, substitute “registrable remittance services”.

4 Section 5 (definition of *batched electronic funds transfer instruction*)

Repeal the definition.

5 Section 5 (definition of *beneficiary institution*)

Repeal the definition, substitute:

beneficiary institution: see subsections 63A(5) to (8).

6 Section 5

Repeal the following definitions:

- (a) definition of ***complete payer information***;
- (b) definition of ***designated remittance arrangement***;
- (c) definition of ***electronic funds transfer instruction***;
- (d) definition of ***funds transfer chain***.

7 Section 5

Insert:

institution: see subsection 63A(12).

intermediary institution: see subsections 63A(9) and (10).

8 Section 5

Repeal the following definitions:

- (a) definition of *multiple-institution person-to-person electronic funds transfer instruction*;
- (b) definition of *multiple-institution same-person electronic funds transfer instruction*;
- (c) definition of *non-financier*.

9 Section 5 (definition of ordering institution)

Repeal the definition, substitute:

ordering institution: see subsections 63A(1) to (4).

10 Section 5

Repeal the following definitions:

- (a) definition of *payee*;
- (b) definition of *payer*.

11 Section 5 (definition of registrable designated remittance service)

Repeal the definition.

12 Section 5

Insert:

registrable remittance service means a designated service that:

- (a) is covered by item 29 or 30 of table 1 in section 6; and
- (b) is provided by a person (other than a financial institution or casino) at or through a permanent establishment of the person in Australia; and
- (c) does not involve a transfer of virtual assets; and

(d) is not of a kind specified in the AML/CTF Rules.

13 Section 5

Repeal the following definitions:

- (a) definition of *remittance arrangement*;
- (b) definition of *required transfer information*;
- (c) definition of *same-institution person-to-person electronic funds transfer instruction*;
- (d) definition of *same-institution same-person electronic funds transfer instruction*;
- (e) definition of *tracing information*.

14 Section 5

Insert:

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.

transfer of value means a transfer of money, virtual assets or property, but does not include:

- (a) a transfer of physical currency or other tangible property; or
- (b) a transfer of a kind specified in the AML/CTF Rules.

15 Section 5

Repeal the following definitions:

- (a) definition of *transferor entity*;
- (b) definition of *ultimate transferee entity*;
- (c) definition of *unique reference number*.

16 Section 5

Insert:

value transfer chain: see subsection 63A(11).

17 Subsection 6(2) (table items 29 to 32)

Repeal the items, substitute:

Schedule 8 Transfers of value and international value transfer services

Part 1 Transfers of value

29	in the capacity of ordering institution, accepting an instruction for the transfer of value on behalf of a payer	the payer
30	in the capacity of beneficiary institution, in relation to a transfer of value, making the transferred value available to a payee	the payee
31	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 ordering institution or intermediary institution from which the transfer message is received (as the case may be)

18 Subsection 6(2) (table item 32A, column headed “Provision of a designated service”, paragraph (a))

Omit “31 or 32”, substitute “29 or 30”.

19 Subsection 6(2) (table item 32A, column headed “Provision of a designated service”, paragraph (b))

Omit “a non-financier”, substitute “not a financial institution”.

20 Sections 8 to 10

Repeal the sections.

21 Part 5 (heading)

Repeal the heading, substitute:

Part 5—Obligations relating to transfers of value

22 Divisions 1 to 3 of Part 5

Repeal the Divisions, substitute:

Division 1—Introduction

63 Simplified outline

The following is a simplified outline of this Part.

- An ordering institution, a beneficiary institution and an intermediary institution in a transfer of value must fulfil certain obligations in relation to the transfer.
- The obligations of an ordering institution relate to the information the institution collects, verifies and provides as part of the transfer.
- The obligations of a beneficiary institution relate to the information the institution receives or otherwise obtains as part of the transfer.
- The obligations of an intermediary institution relate to the information the institution receives and provides as part of the transfer.
- Additional obligations apply if the transfer of value is a transfer of a virtual asset.

63A Key terms relating to transfers of value

Ordering institutions

- (1) Whether a person is an **ordering institution** is to be determined in accordance with the AML/CTF Rules.
- (2) Without limiting subsection (1), AML/CTF Rules made for the purposes of that subsection may specify the following:
 - (a) criteria or other requirements that a person must satisfy to be an ordering institution;
 - (b) circumstances in which a person is an ordering institution.
- (4) However, none of the following persons are an **ordering institution**:

- (a) a person who transfers value in circumstances where the transfer is reasonably incidental to the provision of another service unless:
 - (i) the person is a financial institution; or
 - (ii) the person is providing an international value transfer service incidentally to a designated service covered by item 50, 50A or 50B of table 1 in section 6; or
 - (iii) the person is providing an international value transfer service incidentally to a designated service covered by table 3 in section 6;
- (b) a person specified in the AML/CTF Rules.

Beneficiary institutions

- (5) Whether a person is a **beneficiary institution** is to be determined in accordance with the AML/CTF Rules.
- (6) Without limiting subsection (5), AML/CTF Rules made for the purposes of that subsection may specify the following:
 - (a) criteria or other requirements that a person must satisfy to be a beneficiary institution;
 - (b) circumstances in which a person is a beneficiary institution.
- (8) However, none of the following persons are a **beneficiary institution**:
 - (a) a person who makes value available in circumstances where the making available of the value is reasonably incidental to the provision of another service unless:
 - (i) the person is a financial institution;
 - (ii) the person is providing an international value transfer service incidentally to a designated service covered by item 50, 50A or 50B of table 1 in section 6;
 - (iii) the person is providing an international value transfer service incidentally to a designated service covered by table 3 in section 6;
 - (b) a person specified in the AML/CTF Rules.

Intermediary institution

- (9) A person is an **intermediary institution** if the person:

- (a) 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
 - (b) is specified in the AML/CTF Rules.
- (10) However, none of the following persons are an *intermediary institution*:
- (a) a person who solely provides the infrastructure that permits persons to send transfer messages for a transfer of value to another person in the value transfer chain;
 - (b) a person who is specified in the AML/CTF Rules.

Value transfer chain

- (11) The following persons are taken to form a *value transfer chain*:
- (a) the ordering institution;
 - (b) each intermediary institution (if any) between the ordering institution and the beneficiary institution;
 - (c) the beneficiary institution.

Institutions

- (12) Each person in a value transfer chain is an *institution*.

Payer and payee may be same person etc.

- (13) For the purposes of this Act:
- (a) the payer and the payee in relation to a transfer of value may be the same person; and
 - (b) the ordering institution and the beneficiary institution in relation to a transfer of value may be the same person.

Division 2—Obligations of institutions

64 Obligations of ordering institutions

Scope

- (1) This section applies if an ordering institution commences to provide the designated service covered by item 29 of table 1 in section 6.

Note 1: For exemptions, see sections 67 and 67A.

Note 2: An ordering institution may also have obligations under the *Autonomous Sanctions Act 2011* and the *Charter of the United Nations Act 1945* in relation to persons designated for targeted financial sanctions.

Obligations of ordering institution

- (2) Before the ordering institution passes on a transfer message for the transfer of value, or otherwise gives effect to the transfer of value, the ordering institution must:
 - (a) collect the information specified in the AML/CTF Rules; and
 - (b) if required by the AML/CTF Rules—verify the information specified in the AML/CTF Rules in accordance with sections 28 and 30 (as applicable).
- (3) If the ordering institution and the beneficiary institution for the transfer of value are not the same person, the ordering institution must pass on the information specified in the AML/CTF Rules relating to the transfer of value to the next institution in the value transfer chain.
- (4) If the transfer message for the transfer of value does not give effect to the transfer of value then, for the purposes of subsection (3), the message must be passed on before, or at the same time as, the ordering institution gives effect to the transfer of value.
- (5) The ordering institution must provide the following information to another institution in the value transfer chain as soon as practicable after receiving a request from the institution for that information:
 - (a) the information specified by the AML/CTF Rules for the purposes of paragraph (2)(a);

- (b) the information specified by the AML/CTF Rules for the purposes of subsection (3).

AML/CTF Rules

- (6) AML/CTF Rules made for the purposes of this section may make different provision in relation to different kinds of institutions, information, circumstances or any other matter. This does not limit subsection 33(3A) of the *Acts Interpretation Act 1901*.

Civil penalty

- (7) Subsections (2), (3) and (5) are civil penalty provisions.

65 Obligations of beneficiary institutions

Scope

- (1) This section applies if a beneficiary institution commences to provide the designated service covered by item 30 of table 1 in section 6 to a payee.

Note: For exemptions, see sections 67 and 67A.

Obligations of beneficiary institution

- (2) The beneficiary institution must take reasonable steps to monitor:
- (a) whether it has received the information specified in the AML/CTF Rules relating to the transfer of value; and
 - (b) whether the information received about the payee is accurate.
- (3) If:
- (a) the beneficiary institution:
 - (i) detects that it has not received all of the information mentioned in paragraph (2)(a); and
 - (ii) has not otherwise obtained the information; or
 - (b) the beneficiary institution detects that some or all of the information received or otherwise obtained about the payee is not accurate;

then the beneficiary institution must, in accordance with its AML/CTF program, do at least one of the following:

- (c) refuse to make the transferred value available to the payee;
- (d) take such other action as the beneficiary institution determines.

Note: See also section 26G (reporting entities must comply with AML/CTF policies).

AML/CTF Rules

- (4) AML/CTF Rules made for the purposes of this section may make different provision in relation to different kinds of institutions, information, circumstances or any other matter. This does not limit subsection 33(3A) of the *Acts Interpretation Act 1901*.

Civil penalty

- (5) Subsection (2) is a civil penalty provision.

66 Obligations of intermediary institutions

Scope

- (1) This section applies if an intermediary institution commences to provide the designated service covered by item 31 of table 1 in section 6 in relation to a transfer of value.

Note 1: For exemptions, see section 67.

Note 2: An intermediary institution may also have obligations under the *Autonomous Sanctions Act 2011* and the *Charter of the United Nations Act 1945* in relation to persons designated for targeted financial sanctions.

Obligations of intermediary institutions

- (2) The 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.
- (3) If the intermediary institution detects that it has not received all of the information mentioned in subsection (2), and the intermediary institution has not otherwise obtained the information, the intermediary institution must, in accordance with its AML/CTF program, do at least one of the following:

- (a) refuse to pass on the transfer message for the transfer of value;
- (b) take such other action as the intermediary institution determines.

Note: See also section 26G (reporting entities must comply with AML/CTF policies).

- (4) In passing on a transfer message for a transfer of value, the intermediary institution must include:
 - (a) information, of a kind specified in the AML/CTF Rules, that is received from the previous institution in the value transfer chain; or
 - (b) information obtained in accordance with the intermediary institution's AML/CTF program that is relevant to the transfer.
- (5) The intermediary institution must provide the information referred to in subsection (4) to another institution in the value transfer chain as soon as practicable after receiving a request from the institution for that information.

AML/CTF Rules

- (6) AML/CTF Rules made for the purposes of this section may make different provision in relation to different kinds of institutions, information, circumstances or any other matter. This does not limit subsection 33(3A) of the *Acts Interpretation Act 1901*.

Civil penalty

- (7) Subsections (2), (4) and (5) are civil penalty provisions.

66A Obligations of ordering and beneficiary institutions relating to virtual asset transfers

Scope

- (1) This section applies to the transfer of a virtual asset.

Ordering institution obligations

- (2) Before commencing to provide the designated service covered by item 29 of table 1 in section 6, an ordering institution must undertake due diligence to determine, on reasonable grounds, whether the virtual asset wallet to which the virtual asset is being transferred is:
 - (a) a custodial wallet controlled by a person who is licensed or registered under a law that gives effect to the FATF Recommendations; or
 - (b) a custodial wallet controlled by a person who is not required to be licensed or registered under a law that gives effect to the FATF Recommendations; or
 - (c) a custodial wallet controlled by a person who is required to be licensed or registered under a law that gives effect to the FATF Recommendations, but is not so licensed or registered; or
 - (d) a self-hosted wallet controlled by the payee.
- (3) The ordering institution must pass on the information specified in the AML/CTF Rules for the purposes of subsection 64(3) relating to the transfer of value to a beneficiary institution if the beneficiary institution is:
 - (a) a person who is licensed or registered under a law that gives effect to the FATF Recommendations; or
 - (b) a person who is not required to be licensed or registered under a law that gives effect to the FATF Recommendations.
- (4) An ordering institution must not provide the designated service covered by item 29 of table 1 in section 6 if this would involve passing on a transfer message for a transfer of value to a person:
 - (a) who is required to be licensed or registered under a law that gives effect to the FATF Recommendations; but
 - (b) is not so licensed or registered.

Beneficiary institution obligations

- (5) Before commencing to provide the designated service covered by item 30 of table 1 in section 6, a beneficiary institution must undertake due diligence to determine, on reasonable grounds,

whether the virtual asset wallet from which the virtual asset has been transferred is:

- (a) a custodial wallet controlled by a person who is licensed or registered under a law that gives effect to the FATF Recommendations; or
 - (b) a custodial wallet controlled by a person who is not required to be licensed or registered under a law that gives effect to the FATF Recommendations; or
 - (c) a custodial wallet controlled by a person who is required to be licensed or registered under a law that gives effect to the FATF Recommendations, but is not so licensed or registered; or
 - (d) a self-hosted wallet controlled by the payer.
- (6) A beneficiary institution must not provide the designated service covered by item 30 of table 1 in section 6 in relation to a transfer of value until the beneficiary institution has received or otherwise obtained the information specified in the AML/CTF Rules for the purposes of subsection 65(2) in relation to the transfer.
- (7) A beneficiary institution must not provide the designated service covered by item 30 of table 1 in section 6 if:
- (a) the virtual asset wallet from which the virtual asset has been transferred is a custodial wallet controlled by a person who is required to be licensed or registered under a law that gives effect to the FATF Recommendations; and
 - (b) the person is not so licensed or registered.

Civil penalty

- (8) Subsections (2) to (7) are civil penalty provisions.

Exceptions

- (9) Subsection (3) does not apply if:
- (a) either:
 - (i) the ordering institution has established on reasonable grounds that the beneficiary institution is not capable of receiving the information securely; or

- (ii) the ordering institution reasonably believes that there is a risk that the beneficiary institution is not capable of safeguarding the confidentiality of the information; and
 - (b) the ordering institution makes and keeps a record of the reasons for not passing on the information.
- (10) Subsection (6) does not apply if:
- (a) the beneficiary institution has established on reasonable grounds that an institution in the value transfer chain is not capable of passing on the information securely; and
 - (b) in accordance with the beneficiary institution's AML/CTF program, the beneficiary institution appropriately identifies, assesses, mitigates and manages the risks of money laundering, financing of terrorism and proliferation financing that the beneficiary institution may reasonably face in providing the designated service.
- (11) A person who wishes to rely on subsection (9) or (10) bears an evidential burden in relation to that matter.

23 Section 67

Repeal the section, substitute:

67 Exemptions—general

- (1) The AML/CTF Rules may provide that this Part, or a specified provision of this Part, does not apply:
 - (a) to a specified kind of designated service; or
 - (b) to a transfer of value that occurs in specified circumstances.
- (2) AML/CTF Rules made for the purposes of subsection (1) may make different provision in relation to different kinds of institutions, information, circumstances or any other matter. This does not limit subsection 33(3A) of the *Acts Interpretation Act 1901*.

67A Exemption—escrow services

- (1) This section applies to a person if:
 - (a) the person is any of the following:

- (i) a qualified accountant;
 - (ii) a reporting entity that uses qualified accountants to supply professional accounting services;
 - (iii) a legal practitioner (however described);
 - (iv) a reporting entity that uses legal practitioners (however described) to supply professional legal services; and
- (b) the person provides a designated service covered by item 3 of table 6 in section 6 for the purposes of an escrow agreement.
- (2) Despite section 6, the designated service provided by the person, to the extent that it is provided for the purposes of the escrow agreement, is not also a designated service covered by item 29 or 30 of table 1 in that section.

24 Subsection 68(1)

Omit “or 3”.

25 Sections 69 to 72

Repeal the sections.

26 Section 73

Omit “designated” (wherever occurring).

27 Subsection 74(1A) (heading)

Omit “*designated*”.

28 Subsections 74(1A)

Omit “designated”.

29 Subsection 74(1B) (heading)

Omit “*designated*”.

30 Subsections 74(1B)

Omit “designated”.

31 Division 4 of Part 10

Repeal the Division.

32 Section 118

Omit “115,” (wherever occurring).

33 Subsection 184(4) (after paragraph (fb) of the definition of *designated infringement notice provision*)

Insert:

- (ff) subsections 64(2), (3) and (5) (which deal with obligations of ordering institutions relating to transfers of value);
- (fg) subsections 66(4) and (5) (which deal with obligations of intermediary institutions relating to transfers of value);
- (fh) subsections 66A(4) and (7) (which deal with obligations of ordering and beneficiary institutions relating to virtual asset transfers);

Part 2—International value transfer services

Anti-Money Laundering and Counter-Terrorism Financing Act 2006

34 Section 4

Omit “international funds transfer instructions”, substitute “information about international value transfer services”.

35 Section 5 (definition of *international funds transfer instruction*)

Repeal the definition.

36 Section 5

Insert:

international value transfer service has the meaning given by section 45.

37 Section 40

Omit:

- If a person sends or receives an international funds transfer instruction, the person must give the AUSTRAC CEO a report about the instruction.

substitute:

- If a person provides an international value transfer service, the person must give the AUSTRAC CEO a report about the provision of the service.
- If a person provides a designated service involving a transfer of virtual assets to or from an unverified self-hosted virtual asset wallet, the person must give the

AUSTRAC CEO a report about the provision of the service.

38 Division 4 of Part 3

Repeal the Division, substitute:

Division 4—International value transfer services and transfers of value involving unverified self-hosted virtual asset wallets

45 International value transfer services

- (1) A service is an *international value transfer service* if:
 - (a) the service is covered by item 29 or 30 of table 1 in section 6; and
 - (b) either:
 - (i) the value to be transferred is in Australia and, as a result of the provision of the service, the value will be in a foreign country; or
 - (ii) the value to be transferred is in a foreign country and, as a result of the provision of the service, the value will be in Australia.
- (2) For the purposes of subsection (1), the AML/CTF Rules may specify the circumstances in which the value is *in* a country.

46 Reports of international value transfer services

Scope

- (1) This section applies to a reporting entity if:
 - (a) the reporting entity commences to provide an international value transfer service at or through a permanent establishment of the reporting entity in Australia; and
 - (b) such other conditions (if any) as are set out in the AML/CTF Rules are satisfied.

Report

- (2) The reporting entity must give the AUSTRAC CEO a report about the provision of the international value transfer service within 10 business days after the reporting entity passes on or receives the transfer message for the transfer of value.
- (3) Subsection (2) does not apply if, within the 10 business day period mentioned in that subsection, the reporting entity:
 - (a) reasonably determines that the transfer of value will not occur; and
 - (b) takes reasonable steps to ensure that the transfer of value will not occur.
- (4) A report under subsection (2) must:
 - (a) be in accordance with the approved form, or in a manner specified in the AML/CTF Rules; and
 - (b) contain the information required by the AML/CTF Rules.

Note: For additional rules about reports, see section 244.

Obligation must be discharged by intermediary institution in certain circumstances

- (5) The AML/CTF Rules may specify circumstances in which the obligation imposed on a reporting entity by subsection (2) must be discharged by an intermediary institution in the value transfer chain. If the AML/CTF Rules specify such circumstances, the obligation imposed by subsection (2) must be discharged by the intermediary institution in accordance with the AML/CTF Rules.

Obligation may be discharged by intermediary institution in certain circumstances

- (6) The obligation imposed on a reporting entity by subsection (2) may be discharged by an intermediary institution in the value transfer chain if:
 - (a) the intermediary institution is an intermediary institution that provides, or will provide, the designated service covered by item 31 of table 1 in section 6; and
 - (b) the reporting entity has entered into a written agreement or arrangement with the intermediary institution; and

- (c) the written agreement or arrangement enables the intermediary institution to comply with the obligation.

Civil penalty

- (7) Subsections (2) and (5) are civil penalty provisions.

Exemptions

- (8) This section does not apply to an international value transfer service of a kind specified in the AML/CTF Rules.
- (9) This section does not apply to a transfer of value that occurs in circumstances specified in the AML/CTF Rules.

46A Reports of transfers of value involving unverified self-hosted virtual asset wallets

Scope

- (1) This section applies to a reporting entity if:
 - (a) the reporting entity commences to provide a designated service covered by item 29 or 30 of table 1 in section 6 at or through a permanent establishment of the reporting entity in Australia; and
 - (b) the service involves:
 - (i) receiving virtual assets transferred from a self-hosted virtual asset wallet; or
 - (ii) transferring virtual assets to a self-hosted virtual asset wallet; and
 - (c) the person who controls the self-hosted virtual asset wallet has not been verified by the reporting entity in accordance with the reporting entity's AML/CTF program.

Report

- (2) The reporting entity must give the AUSTRAC CEO a report about the provision of the designated service within 10 business days after commencing to provide the service.
- (3) A report under subsection (2) must:

- (a) be in accordance with the approved form, or in a manner specified in the AML/CTF Rules; and
- (b) contain the information required by the AML/CTF Rules.

Note: For additional rules about reports, see section 244.

Civil penalty

- (4) Subsection (2) is a civil penalty provision.

Exemptions

- (5) This section does not apply to transfer of value of a kind specified in the AML/CTF Rules.
- (6) This section does not apply to a transfer of value that occurs in circumstances specified in the AML/CTF Rules.

39 Before section 49

Insert:

48A Amending or withdrawing reports

- (1) The AML/CTF Rules may make provision in relation to the amendment or withdrawal of a report given under section 41, 43, 46 or 46A.
- (2) Without limiting subsection (1), the AML/CTF Rules may deal with the following:
 - (a) timeframes within which requests to amend or withdraw a report may or must be made;
 - (b) timeframes within which a report must be amended or withdrawn if a request is accepted;
 - (c) the process for making and deciding requests to amend or withdraw a report;
 - (d) the consequences for amending or withdrawing a report.

40 Section 49

Omit “or 45” (wherever occurring)”, substitute “, 46 or 46A”.

41 Section 51

Omit “45”, substitute “46, 46A”.

42 Subparagraph 51G(3)(c)(ii)

Repeal the subparagraph, substitute:

- (ii) section 46 (reports of international value transfer services);
- (iia) section 46A (reports of transfers of value involving unverified self-hosted virtual asset wallets);

43 Subsection 184(1C)

Omit “45(2)”, substitute “46(2) or (5), 46A(2)”.

44 Subsection 184(4) (paragraph (d) of the definition of *designated infringement notice provision*)

Repeal the paragraph, substitute:

- (d) subsection 46(2) or (5) (which deals with reporting about international value transfer services);
- (da) subsection 46A(2) (which deals with reporting about transfers of value involving unverified self-hosted virtual asset wallets);

45 Paragraph 191(2)(b)

Omit “45(2)”, substitute “46(2) or (5), 46A(2)”.

Schedule 9—Powers and definitions

Part 1—Examination power

Anti-Money Laundering and Counter-Terrorism Financing Act 2006

1 Section 5

Insert:

examinee, in relation to an examination under Division 3 of Part 14, means the person who appears for examination.

examiner, in relation to an examination under Division 3 of Part 14, means the AUSTRAC CEO and includes:

- (a) a delegate of the AUSTRAC CEO; and
- (b) a consultant engaged under subsection 225(1) to perform services as an examiner.

statement, in relation to an examination under Division 3 of Part 14, includes a question asked, an answer given, and any other comment or remark made, at the examination.

written record, in relation to an examination under Division 3 of Part 14, means:

- (a) a record of the examination:
 - (i) that is made in writing; or
 - (ii) as reduced to writing; or
- (b) a part of such a record.

2 Before section 166

Insert:

Division 1—Introduction

3 Section 166

Repeal the section, substitute:

166 Simplified outline

An authorised officer may obtain information or documents.

If the AUSTRAC CEO believes on reasonable grounds that a person has information or a document that is relevant to compliance with this Act, the regulations or the AML/CTF Rules, or an offence against the *Crimes Act 1914* or the *Criminal Code* that relates to this Act, the regulations or the AML/CTF Rules, the AUSTRAC CEO may require the person:

- (a) to produce to the AUSTRAC CEO, within the period and in the manner specified in the notice, any such documents; or
- (b) to appear before an examiner for examination under this Division on oath or affirmation and to answer questions, and to produce any such documents.

The examiner may, and must if the examinee so requests, cause a record to be made of statements made at an examination under this Division.

A statement made by a person at an examination under this Division of the person is admissible in evidence against the person in certain proceedings except in certain circumstances.

4 Before section 167

Insert:

Division 2—Powers of authorised officers

5 At the end of Part 14

Add:

Division 3—Other powers to obtain information and documents

Subdivision A—Examination of persons

172A Power of AUSTRAC CEO to obtain information and documents

- (1) This section applies if the AUSTRAC CEO believes on reasonable grounds that a person has information or a document that is relevant to:
 - (a) compliance with this Act, the regulations or the AML/CTF Rules; or
 - (b) an offence against the *Crimes Act 1914* or the *Criminal Code* that relates to this Act, the regulations or the AML/CTF Rules.
- (2) The AUSTRAC CEO may, by written notice given to the person, require the person:
 - (a) to produce to the AUSTRAC CEO, within the period and in the manner specified in the notice, any such documents; or
 - (b) to appear before an examiner at the time and place specified in the notice:
 - (i) for examination under this Division, on oath or affirmation and to answer questions; and
 - (ii) to produce any such documents.
- (3) The notice must:
 - (a) if paragraph (2)(b) applies—state the general nature of the matter to which the questions will relate; and
 - (b) in any case set out the effect of subsections (4) and 172F(1).
- (4) A person commits an offence if the person intentionally or recklessly fails to comply with a notice under subsection (2).

Penalty: Imprisonment for 2 years or 100 penalty units, or both.

172B Proceedings at examination

Sections 172C to 172H apply if, in accordance with a notice given under section 172A, a person (in this Division called the *examinee*) appears before another person (in this Division called the *examiner*) for examination.

172C Requirements made of persons appearing for examination

- (1) If a person appears for examination in accordance with a notice given under subsection 172A(2), the examiner may examine the person on oath or affirmation and may, for that purpose:
 - (a) require the person to either take an oath or make an affirmation; and
 - (b) administer an oath or affirmation to the person.
- (2) The oath or affirmation to be taken or made by the examinee for the purposes of the examination is an oath or affirmation that the statements that the examinee will make will be true.
- (3) A person commits an offence of strict liability if the person refuses or fails to comply with a requirement made under subsection (1).

Penalty: 3 months imprisonment.

- (4) The examiner may require the person to answer a question that is put to the person at the examination and is relevant to:
 - (a) compliance with this Act, the regulations or the AML/CTF Rules; or
 - (b) an offence against the *Crimes Act 1914* or the *Criminal Code* that relates to this Act, the regulations or the AML/CTF Rules.
- (5) A person commits an offence if the person intentionally or recklessly refuses or fails to comply with a requirement made under subsection (4).

Penalty: Imprisonment for 2 years.

172D Examination to take place in private

- (1) An examination under this Division must take place in private and the examiner may give directions about who may be present during it, or during a part of it.
- (2) A person commits an offence of strict liability if:
 - (a) the person is present at the examination; and
 - (b) the person is not:
 - (i) the examiner or examinee; or
 - (ii) a member of the staff of AUSTRAC approved by the examiner; or
 - (iii) entitled to be present by virtue of a direction under subsection (1) or subsection 172F(1).

Penalty: 30 penalty units.

172E Procedures for holding an examination

- (1) The examiner may decide to hold an examination under this Division:
 - (a) at one or more physical venues; or
 - (b) at one or more physical venues and using virtual examination technology that allows a person to appear at all or part of the examination without being physically present at the examination; or
 - (c) using virtual examination technology only.
- (2) Subsection (3) applies if the examination is held:
 - (a) at one or more physical venues and using virtual examination technology; or
 - (b) using virtual examination technology only.
- (3) The examiner must ensure that the use of the virtual examination technology is reasonable.
- (4) If the examination is held:
 - (a) at more than one physical venue; or
 - (b) at one or more physical venues and using virtual examination technology; or

(c) using virtual examination technology only;
the examiner may appoint a single place and time at which the examination is taken to have been held.

(5) This section applies to part of an examination in the same way that it applies to all of an examination.

(6) In this section:

virtual examination technology means any technology that allows a person to appear at all or part of an examination under this Division without being physically present at the examination.

172F Examinee's lawyer may attend

(1) The examinee's lawyer may be present at the examination and may, at such times during the examination as the examiner determines:

- (a) address the examiner; and
- (b) examine the examinee;

about matters about which the examiner has examined the examinee.

(2) If, in the examiner's opinion, a person is trying to obstruct the examination by exercising rights under subsection (1), the examiner may require the person to stop addressing the examiner, or examining the examinee, as the case requires.

(3) A person commits an offence of strict liability if the person refuses or fails to comply with a requirement made under subsection (2).

Penalty: 20 penalty units.

172G Record of examination

(1) The examiner may, and must if the examinee so requests, cause a record to be made of statements made at an examination under this Division.

(2) If a record made under subsection (1) is in writing or is reduced to writing:

- (a) the examiner may require the examinee to read it, or to have it read to the examinee, and may require the examinee to sign it; and
 - (b) the examiner must, if requested in writing by the examinee to give to the examinee a copy of the written record, comply with the request without charge but subject to such conditions (if any) as the examiner imposes.
- (3) A person commits an offence of strict liability if the person fails to comply with a requirement made under paragraph (2)(a).

Penalty: 3 months imprisonment.

172H Giving to other persons copies of written record of examination

- (1) The AUSTRAC CEO may give a copy of the whole or a part of a written record of an examination made under subsection 172G(1) to a person's lawyer if the lawyer satisfies the AUSTRAC CEO that the person is carrying on, or is contemplating in good faith, a proceeding in respect of a matter to which the examination related.
- (2) A person commits an offence of strict liability if:
- (a) the AUSTRAC CEO gives a copy of the whole or a part of a written record of an examination to a person under subsection (1); and
 - (b) the person, or any other person who has possession, custody or control of the copy or a copy of it:
 - (i) uses the copy or a copy of it; or
 - (ii) publishes, or communicates to another person, the copy, a copy of it, or any part of the copy's contents; except in connection with preparing, beginning or carrying on, or in the course of, a proceeding.
- Penalty: 30 penalty units.
- (3) The AUSTRAC CEO may, subject to such conditions (if any) as it imposes, give to a person a copy of the whole or a part of a written record of the examination made under subsection 172G(1).

172J Copies of record of examination given subject to conditions

A person (the *first person*) commits an offence of strict liability if:

- (a) a copy of the whole or a part of a record is given to a person under subsection 172G(2) or 172H(3) subject to conditions; and
- (b) the first person:
 - (i) is the person referred to in paragraph (a); or
 - (ii) has possession, custody or control of the copy or a copy of it; and
- (c) the first person engages in conduct; and
- (d) the first person's conduct breaches the condition.

Penalty: 30 penalty units.

172K Self-incrimination

- (1) For the purposes of this Division, it is not a reasonable excuse for an individual to refuse or fail:

- (a) to answer a question; or
- (b) to produce a document; or
- (c) to sign a record;

in accordance with a requirement made of the individual under this Division, on the ground that answering the question, producing the document or signing the record might tend to incriminate the individual or expose the individual to a penalty.

- (2) Subsection (3) applies if:

- (a) before making an oral statement in answer to a question, or signing a record, in accordance with a requirement made under this Division, the individual claims that the statement or the signing of the record (as the case may be) might tend to incriminate the individual or make the individual liable to a penalty; and
- (b) the statement or the signing of the record (as the case may be) might, in fact, tend to incriminate the individual or make the individual so liable.

- (3) The statement or the fact that the individual has signed the record (as the case may be) is not admissible in evidence against the individual in:
- (a) civil or criminal proceedings; or
 - (b) a proceeding for the imposition of a penalty;
- other than a proceeding in respect of:
- (c) in the case of the making of a statement—the falsity of the statement; or
 - (d) in the case of the signing of a record—the falsity of any statement contained in the record.

Note: The law relating to legal professional privilege is not affected by this Act (see section 242).

Subdivision B—Evidentiary use of certain material

172L Statements made at an examination—proceedings against examinee

- (1) A statement that a person makes at an examination under this Division of the person is admissible in evidence against the person in a proceeding referred to in subsection (2) unless:
- (a) because of subsection 172K(3), the statement is not admissible in evidence against the person in the proceeding; or
 - (b) the statement is not relevant to the proceeding and the person objects to the admission of evidence of the statement; or
 - (c) the statement is qualified or explained by another statement made at the examination, evidence of the other statement is not tendered in the proceeding, and the person objects to the admission of evidence of the first-mentioned statement; or
 - (d) the statement discloses matter in respect of which the person could claim legal professional privilege in the proceeding if this subsection did not apply in relation to the statement, and the person objects to the admission of evidence of the statement.

Note: The law relating to legal professional privilege is not affected by this Act (see section 242).

- (2) For the purposes of subsection (1), the proceedings are:

- (a) a proceeding in a court; or
 - (b) a proceeding or hearing before, or an examination by or before, a tribunal in Australia or any other body, authority or person in Australia having power, by law or by consent of parties, to hear, receive or examine evidence;
whether the proceeding, hearing or examination is of a civil, administrative, criminal, disciplinary or other nature.
- (3) Subsection (1) applies in relation to a proceeding against a person even if it is heard together with a proceeding against another person.
- (4) If a written record of an examination of a person is signed by the person under subsection 172G(2) or authenticated in any other manner specified in the AML/CTF Rules, the record is, in a proceeding, prima facie evidence of the statements it records, but nothing in this Division limits or affects the admissibility in the proceeding of other evidence of statements made at the examination.

172M Statements made at an examination—other proceedings

- (1) If direct evidence by a person (the *absent witness*) of a matter would be admissible in a proceeding referred to in subsection (2), a statement that the absent witness made at an examination under this Division of the absent witness and that tends to establish that matter is admissible in the proceeding as evidence of that matter:
- (a) if it appears to the court or tribunal that:
 - (i) the absent witness is dead or is unfit, because of physical or mental incapacity, to attend as a witness; or
 - (ii) the absent witness is outside the State or Territory in which the proceeding is being heard and it is not reasonably practicable to secure the witness' attendance;
or
 - (iii) all reasonable steps have been taken to find the absent witness but the witness cannot be found; or
 - (b) if it does not so appear to the court or tribunal—unless another party to the proceeding requires the party tendering evidence of the statement to call the absent witness as a

witness in the proceeding and the tendering party does not so call the absent witness.

- (2) For the purposes of subsection (1), the proceedings are:
- (a) a proceeding in a court; or
 - (b) a proceeding or hearing before, or an examination by or before, a tribunal in Australia or any other body, authority or person in Australia having power, by law or by consent of parties, to hear, receive or examine evidence;
- whether the proceeding, hearing or examination is of a civil, administrative, criminal, disciplinary or other nature.

172N Weight of evidence admitted under section 172M

- (1) This section applies if evidence of a statement made by a person at an examination under this Division of the person is admitted under section 172M in a proceeding.
- (2) In deciding how much weight (if any) to give to the statement as evidence of a matter, regard is to be had to:
- (a) how long after the matters to which it related the statement was made; and
 - (b) any reason the person may have had for concealing or misrepresenting a material matter; and
 - (c) any other circumstances from which it is reasonable to draw an inference about how accurate the statement is.
- (3) If the person is not called as a witness in the proceeding:
- (a) evidence that would, if the person had been so called, have been admissible in the proceeding for the purpose of destroying or supporting the person's credibility is so admissible; and
 - (b) evidence is admissible to show that the statement is inconsistent with another statement that the person has made at any time.

- (4) However, evidence of a matter is not admissible under this section if, had the person been called as a witness in the proceeding and denied the matter in cross-examination, evidence of the matter would not have been admissible if adduced by the cross-examining party.

172P Objection to admission of statements made at examination

- (1) A party (the *adducing party*) to a proceeding referred to in subsection (2) may, not less than 14 days before the first day of the hearing of the proceeding, give to another party to the proceeding written notice that the adducing party:
- (a) will apply to have admitted in evidence in the proceeding specified statements made at an examination under this Division; and
 - (b) for that purpose, will apply to have evidence of those statements admitted in the proceeding.
- (2) For the purposes of subsection (1), the proceedings are:
- (a) a proceeding in a court; or
 - (b) a proceeding or hearing before, or an examination by or before, a tribunal in Australia or any other body, authority or person in Australia having power, by law or by consent of parties, to hear, receive or examine evidence;
- whether the proceeding, hearing or examination is of a civil, administrative, criminal, disciplinary or other nature.
- (3) A notice under subsection (1) must set out, or be accompanied by writing that sets out, the specified statements.
- (4) Within 14 days after a notice is given under subsection (1), the other party may give to the adducing party a written notice:
- (a) stating that the other party objects to specified statements being admitted in evidence in the proceeding; and
 - (b) specifies, in relation to each of those statements, the grounds of objection.
- (5) The period prescribed by subsection (4) may be extended by the court or tribunal or by agreement between the parties concerned.

- (6) On receiving a notice given under subsection (4), the adducing party must give to the court or tribunal or other body referred to in paragraph (2)(b) (as the case requires) a copy of:
 - (a) the notice under subsection (1) and any writing that subsection (3) required to accompany that notice; and
 - (b) the notice under subsection (4).
- (7) If subsection (6) is complied with, the court or tribunal or other body may either:
 - (a) determine the objections as a preliminary point before the hearing of the proceeding begins; or
 - (b) defer determination of the objections until the hearing.
- (8) If a notice has been given in accordance with subsections (1) and (3), the other party is not entitled to object at the hearing of the proceeding to a statement specified in the notice being admitted in evidence in the proceeding, unless:
 - (a) the other party has, in accordance with subsection (4), objected to the statement being so admitted; or
 - (b) the court or tribunal or other body gives the other party leave to object to the statement being so admitted.

172Q Material otherwise admissible

Nothing in this Division renders evidence inadmissible in a proceeding in circumstances where it would have been admissible in that proceeding if this Division had not been enacted.

Subdivision C—Miscellaneous

172R Application of Crimes Act and Evidence Act

- (1) For the purposes of Part III of the *Crimes Act 1914*, an examination under this Division is a judicial proceeding.
- (2) Part 2.2, sections 69, 70, 71 and 147 and Division 2 of Part 4.6 of the *Evidence Act 1995* apply to an examination under this Division in the same way that they apply to a proceeding to which that Act applies under section 4 of that Act.

Part 2—Information gathering power

Division 1—Main amendments

Anti-Money Laundering and Counter-Terrorism Financing Act 2006

6 After section 49A

Insert:

49B Notice to obtain information or documents in certain circumstances

Scope

- (1) This section applies if a person has information or a document that may assist the AUSTRAC CEO with:
 - (a) obtaining or analysing information to support efforts to combat money laundering, terrorism financing, proliferation financing or other serious crimes; or
 - (b) identifying trends, patterns, threats or vulnerabilities associated with money laundering, terrorism financing, proliferation financing or other serious crimes;for the purposes of the performance of functions of the AUSTRAC CEO.

Requirements

- (2) The AUSTRAC CEO may, by written notice given to the person, require the person:
 - (a) to give to the AUSTRAC CEO, within the period and in the manner specified in the notice, any such information; or
 - (b) to produce to the AUSTRAC CEO, within the period and in the manner specified in the notice, any such documents.
- (3) The AUSTRAC CEO must not give a notice under subsection (2) to a person unless the AUSTRAC CEO reasonably believes that

the person has knowledge of the information, or possession or control of the document, that is specified in the notice.

Content of notice

- (4) The period specified in the notice in accordance with paragraph (2)(a) or (b) must be at least 14 days after the notice is given unless:
 - (a) the AUSTRAC CEO considers that specifying a shorter period is necessary; and
 - (b) the shorter period specified is reasonable in the circumstances.
- (5) A notice under subsection (2) must set out the effect of the following provisions:
 - (a) subsection (7);
 - (b) section 136;
 - (c) section 137.

Note 1: Section 136 is about giving false or misleading information.

Note 2: Section 137 is about producing false or misleading documents.

Compliance

- (6) A person must comply with a notice under subsection (2).

Civil penalty provisions

- (7) Subsection (6) is a civil penalty provision.

49C Authorisation to obtain information or documents in certain circumstances

Scope

- (1) This section applies if a person has information or a document that may assist the AUSTRAC CEO with:
 - (a) obtaining or analysing information to support efforts to combat money laundering, terrorism financing, proliferation financing or other serious crimes; or

(b) identifying trends, patterns, threats or vulnerabilities associated with money laundering, terrorism financing, proliferation financing or other serious crimes;
for the purposes of the performance of functions of the AUSTRAC CEO.

Authorisation

- (2) The AUSTRAC CEO may, by written notice given to the person, authorise the person:
- (a) to give to the AUSTRAC CEO any such information; or
 - (b) to produce to the AUSTRAC CEO any such documents.

Content of notice

- (3) A notice under subsection (2) must set out the effect of the following provisions:
- (a) subsection (5);
 - (b) section 136;
 - (c) section 137.

Note 1: Section 136 is about giving false or misleading information.

Note 2: Section 137 is about producing false or misleading documents.

Information disclosure etc.

- (4) A person may give information or produce a document to the AUSTRAC CEO in accordance with a notice under subsection (2).

Note: This subsection constitutes an authorisation for the purposes of the *Privacy Act 1988* and other laws.

- (5) This section applies despite any general law obligation of confidence.

7 Section 50A (at the end of the heading)

Add “, 49B or 49C”.

8 Paragraph 50A(1)(b)

Omit “or this section”, substitute “, 49B or 49C”.

9 Paragraphs 50A(3)(a) and (b)

Omit “or this section”, substitute “, 49B or 49C”.

10 Section 51

Omit “or 49”, substitute “, 49, 49B or 49C”.

11 Section 120

Before:

- The AUSTRAC CEO may authorise officials of Commonwealth, State or Territory agencies to access AUSTRAC information for the purposes of performing the agency’s functions and duties and exercising the agency’s powers.

insert:

- Certain persons must not disclose information relating to the giving or production of certain reports, information or other documents.

12 After subsection 123(2)

Insert:

- (2A) If a person (the *first person*) is required by a notice under subsection 49B(2) to give information or produce a document, the first person must not disclose to another person (except an AUSTRAC entrusted person):
- (a) that the first person is or has been required by a notice under subsection 49B(2) to give information or produce a document; or
 - (b) that the information has been given or the document has been produced.

13 Subsection 123(10)

Omit “a reporting entity is not to be required to disclose to a court or tribunal information mentioned in subsection (1) or (2)”, substitute “a person is not to be required to disclose to a court or tribunal information mentioned in subsection (1), (2) or (2A)”.

14 Paragraph 123(11)(a)

After “(2),” insert “(2A),”.

15 Subsection 167(1)

Repeal the subsection, substitute:

- (1) This section applies to a person if an authorised officer reasonably believes that the person has knowledge of information, or possession or control of a document, that is relevant to the compliance with or enforcement of:
 - (a) an offence provision of this Act or the regulations; or
 - (b) a civil penalty provision of this Act or the regulations; or
 - (c) an offence provision of the *Crimes Act 1914* or the *Criminal Code*, to the extent that it relates to this Act.

16 After subsection 167(3)

Insert:

Compliance

(3A) A person must comply with a notice given under subsection (2).

(3B) Subsection (3A) is a civil penalty provision.

17 At the end of paragraph 169(2)(d)

Add:

- ; or (iii) proceedings for an offence against a provision covered by the definition of *money laundering* in section 5; or
- (iv) proceedings for an offence against a provision covered by the definition of *financing of terrorism* in section 5; or
- (v) proceedings for an offence against a provision covered by the definition of *proliferation financing* in section 5.

18 Subsection 184(4) (after paragraph (f) of the definition of *designated infringement notice provision*)

Insert:

(fb) subsection 49B(6) (which deals with complying with a notice requiring certain information or documents);

19 At the end of subsection 184(4) (at the end of the definition of *designated infringement notice provision*)

Add:

; (h) subsection 167(3A) (which deals with complying with a notice requiring certain information or documents).

Division 2—Consequential amendments

Freedom of Information Act 1982

20 Subparagraph 7(2G)(a)(iii)

After “section 49”, insert “, 49B or 49C”.

Part 3—Definitions

Anti-Money Laundering and Counter-Terrorism Financing Act 2006

21 Section 5 (definition of *credit card*)

Repeal the definition, substitute:

credit card is a thing (whether real or virtual) that is one or more of the following:

- (a) a thing of a kind commonly known as a credit card;
- (b) a similar thing intended for use by a person in obtaining access to an account that is held by the person for the purpose of obtaining money, goods or services on credit;
- (c) a thing of a kind that persons carrying on business commonly issue to their customers, or prospective customers, for use in obtaining goods or services from those persons on credit;
- (d) a thing that may be used as a thing referred to in paragraph (a), (b) or (c).

22 Section 5 (definition of *debit card*)

Repeal the definition, substitute:

debit card means:

- (a) a thing (whether real or virtual) that is intended for use by a person in obtaining access to an account that is held by the person for the purpose of withdrawing or depositing physical currency or obtaining goods or services; or
- (b) a thing (whether real or virtual) that may be used as a thing referred to in paragraph (a).

23 Section 5 (definition of *derivative*)

Repeal the definition, substitute:

derivative: see subsections 7A(3) and (4).

24 Section 5 (definition of *issue*)

Omit “includes grant or otherwise make available”, substitute “has the same meaning as in Chapter 7 of the *Corporations Act 2001*”.

25 Section 5 (paragraphs (e) and (f) of the definition of *loan*)

Omit “(within the meaning of the *Competition and Consumer Act 2010*)”.

26 Section 5 (definition of *money*)

At the end of the definition, add:

; and (d) a digital representation of value:

- (i) that is issued by or under the authority of a government body; and
- (ii) that is intended to function as money.

Example: Central bank digital currency.

26A Section 5 (after paragraph (b) of the definition of *qualified accountant*)

Insert:

(ba) the Institute of Public Accountants; or

27 Section 5 (definition of *security*)

Repeal the definition, substitute:

security: see subsections 7A(1) and (2).

28 Section 5 (definition of *service*)

Repeal the definition.

29 After section 7

Insert:

7A Securities and derivatives

(1) *Security* has the same meaning as in Chapter 7 of the *Corporations Act 2001*.

(2) Despite subsection (1), the AML/CTF Rules may provide:

- (a) that a specified thing is a *security*; or
 - (b) that a specified thing is not a *security*.
- (3) *Derivative* has the same meaning as in Chapter 7 of the *Corporations Act 2001*.
- (4) Despite subsection (3), the AML/CTF Rules may provide:
- (a) that a specified thing is a *derivative*; or
 - (b) that a specified thing is not a *derivative*.

Part 4—Contingent amendment

Anti-Money Laundering and Counter-Terrorism Financing Act 2006

30 Subsection 123(8B)

Omit “and (2) do not apply to the disclosure of information by a reporting entity”, substitute “, (2) and (2A) do not apply to the disclosure of information by a person”.

Schedule 10—Exemptions

Anti-Money Laundering and Counter-Terrorism Financing Act 2006

1 Section 5 (definition of *account*)

Repeal the definition, substitute:

account includes:

- (a) an account which has a nil balance; and
- (b) an account in relation to which no transactions have been allowed.

2 Section 5

Insert:

Australian Border Force has the same meaning as in the *Australian Border Force Act 2015*.

credit card acquirer means a person who:

- (a) is a participant of a designated payment system under the *Payment Systems (Regulation) Act 1998*; and
- (b) pays, or accepts liability to pay, a merchant (either directly or through another person) for goods or services obtained, or to be obtained, by another person from the merchant in a credit card transaction.

credit card issuer means a person who:

- (a) is a participant of a designated payment system under the *Payment Systems (Regulation) Act 1998*; and
- (b) issues a credit card to a customer; and
- (c) either:
 - (i) receives payment from the customer for amounts owed by the customer, under the terms governing the credit card, for credit card transactions; or
 - (ii) pays, or accepts liability to pay, a credit card acquirer (either directly or through another person) for amounts

paid or payable by the acquirer to a merchant for the customer's credit card transactions.

deductible gift recipient has the same meaning as in the *Income Tax Assessment Act 1997*.

departing Australia superannuation payment has the same meaning as in the *Income Tax Assessment Act 1997*.

exchange settlement account means an account provided by the Reserve Bank of Australia that is used for the final settlement of obligations between holders of such accounts.

extension notice: see subsection 39B(7).

keep open notice: see subsection 39B(1).

on-course bookmaker means a person who carries on a business of a bookmaker or a turf commission agent at a racecourse.

online gambling service:

- (a) means a designated service covered by an item of table 3 in section 6 of this Act that is provided to a customer using any of the means referred to in paragraph 5(1)(b) of the *Interactive Gambling Act 2001*; and
- (b) includes an excluded wagering service (within the meaning of that Act), but does not include a telephone betting service (within the meaning of that Act).

representative office, of a foreign bank, is an office of the foreign bank in Australia in respect of which the foreign bank has written consent to establish the representative office in Australia for the purposes of section 67 of the *Banking Act 1959*.

senior member of an agency: see subsection 39B(3).

serious offence: see subsection 39B(2).

totalisator agency board means a board or authority established, or a company holding a licence, under a law of a State or Territory for purposes that include the purpose of operating a betting service.

3 Subsection 6(2) (table item 1, column headed “Provision of a designated service”, paragraph (e))

Repeal the paragraph, substitute:

- (e) a credit card issuer; or
- (f) a credit card acquirer; or
- (g) a person specified in the AML/CTF Rules

4 Subsection 6(2) (table item 2, column headed “Provision of a designated service”, paragraph (e))

Repeal the paragraph, substitute:

- (e) a credit card issuer; or
- (f) a credit card acquirer; or
- (g) a person specified in the AML/CTF Rules

5 Subsection 6(2) (table item 3, column headed “Provision of a designated service”, paragraph (e))

Repeal the paragraph, substitute:

- (e) a credit card issuer; or
- (f) a credit card acquirer; or
- (g) a person specified in the AML/CTF Rules

6 Subsection 6(2) (table item 47, column headed “Provision of a designated service”, paragraph (b))

Repeal the paragraph, substitute:

- (b) the service is not provided in the course of carrying on a business that provides short-term accommodation for travellers; and
- (c) the service is not specified in the AML/CTF Rules

7 At the end of Division 7 of Part 2

Add:

39A Exemption—assisting the investigation of certain offences

- (1) This section applies if:
 - (a) a reporting entity receives a keep open notice in relation to a customer; and
 - (b) the keep open notice is in force.

-
- (2) Despite any other provision of this Part or Part 1A, section 28, 30 or 26G does not apply to the reporting entity in respect of the provision of a designated service to the customer to the extent that the reporting entity reasonably believes that compliance with that section would or could reasonably be expected to alert the customer to the existence of a criminal investigation.

Note 1: A suspicious matter reporting obligation does not arise for a reporting entity in relation to a customer upon the receipt of a keep open notice. However, a suspicious matter reporting obligation may otherwise arise for the reporting entity in relation to the customer in accordance with section 41.

Note 2: A keep open notice does not compel a reporting entity to continue to provide a designated service to a customer.

- (3) For the purposes of subsection (2), it is immaterial whether the reporting entity knows of the existence or otherwise of a criminal investigation.
- (4) If subsection (2) applies in relation to the provision by a reporting entity of a designated service to a customer, section 139 (providing a designated service using a false customer name or customer anonymity) does not apply in relation to the provision by the reporting entity of that designated service to the customer.

Note: A defendant bears an evidential burden in relation to the matter in subsection (4) (see subsection 13.3(3) of the *Criminal Code*).

39B Keep open notices

- (1) A senior member of an agency mentioned in subsection (4) may issue a notice (a ***keep open notice***) to a reporting entity if the senior member reasonably believes that the provision of a designated service by the reporting entity to a customer would assist in the investigation by the agency of a serious offence.
- (2) A ***serious offence*** is:
- (a) an offence against a law of the Commonwealth, or a law of a State or Territory, that is punishable by imprisonment for 2 years or more; or
 - (b) an offence against a law of a foreign country that involves an act or omission that, if it had occurred in Australia, would have constituted an offence covered by paragraph (a).

- (3) A *senior member* of an agency is:
- (a) the head of an agency mentioned in subsection (4); or
 - (b) a statutory office holder of an agency mentioned in subsection (4); or
 - (c) an officer or employee of an agency mentioned in subsection (4) that:
 - (i) is an SES employee or acting SES employee in the agency; or
 - (ii) holds or is acting in a position in the agency that is equivalent to or higher than a position occupied by an SES employee; or
 - (iii) holds or is acting in a position that is prescribed by the AML/CTF Rules for the purposes of this paragraph.
- (4) The agencies are as follows:
- (a) the Australian Border Force;
 - (b) the Australian Crime Commission;
 - (c) the Australian Federal Police;
 - (d) the National Anti-Corruption Commission;
 - (e) the New South Wales Crime Commission;
 - (f) the police force or police service of a State or the Northern Territory;
 - (g) a Commonwealth, State or Territory agency prescribed by the AML/CTF Rules.
- (5) A keep open notice must:
- (a) be in the form prescribed by the AML/CTF Rules for the purposes of this paragraph; and
 - (b) contain such information, and be accompanied by such documents, as is required by the AML/CTF Rules.
- (6) Subject to subsections (7) and (8), a keep open notice is in force for the period:
- (a) starting on the day specified in the notice; and
 - (b) ending on the earlier of:
 - (i) the day that is 6 months after the day specified in the notice; and

-
- (ii) if the investigation to which the notice relates has ended—the day the agency that issued the notice notifies the reporting entity and the AUSTRAC CEO that the relevant investigation has ended.
- (7) A senior member of an agency that issued a keep open notice to a reporting entity may, by notice (an *extension notice*) to the reporting entity in the form prescribed by the AML/CTF Rules for the purposes of this subsection, extend the period for which the keep open notice remains in force for a further period of 6 months if:
- (a) the extension notice is issued to the reporting entity before the expiry of the keep open notice; and
 - (b) subject to subsection (8), the keep open notice has not previously been extended more than once under this subsection; and
 - (c) the senior member of the agency reasonably believes that the continued provision of a designated service by the reporting entity to the customer would assist in the investigation by the agency of a serious offence.
- (8) Paragraph (7)(b) does not apply in relation to an extension notice if:
- (a) the keep open notice has previously been extended at least twice under subsection (7); and
 - (b) a senior member of the agency that issued the keep open notice applies to the AUSTRAC CEO in the form prescribed by the AML/CTF Rules for the purposes of this paragraph; and
 - (c) the AUSTRAC CEO is satisfied that the continued provision of a designated service by the reporting entity to the customer would assist in the investigation by the agency of a serious offence; and
 - (d) the AUSTRAC CEO gives notice, in writing, to the agency that paragraph (7)(b) does not apply in relation to the extension notice.
- (9) The AUSTRAC CEO may give a notice under paragraph (8)(d) more than once in relation to a particular keep open notice.

39C Keep open notices—AUSTRAC oversight

- (1) This section applies if a senior member of an agency mentioned in subsection 39B(4) issues to a reporting entity:
 - (a) a keep open notice under subsection 39B(1); or
 - (b) an extension notice under subsection 39B(7).
- (2) The senior member of the agency must send a copy of the keep open notice or extension notice to the AUSTRAC CEO at the same time the notice is issued to the reporting entity.
- (3) The AUSTRAC CEO may revoke:
 - (a) a keep open notice issued under subsection 39B(1); or
 - (b) an extension notice under subsection 39B(7);if the AUSTRAC CEO is satisfied that the notice does not comply with the requirements of this Act or the AML/CTF Rules.
- (4) If the AUSTRAC CEO revokes a notice under subsection (3), the AUSTRAC CEO must notify:
 - (a) the agency that issued the notice; and
 - (b) the reporting entity to whom the notice was issued.

39D Exemption—when a suspicious matter reporting obligation arises

- (1) This section applies if a suspicious matter reporting obligation arises for a reporting entity in relation to a customer.

Note: For *suspicious matter reporting obligation*, see section 41.
- (2) Despite any other provision of this Part or Part 1A, section 28, 30, or 26G does not apply to the reporting entity in respect of the provision of a designated service to the customer to the extent that the reporting entity reasonably believes that compliance with that section would or could reasonably be expected to alert the customer to the reporting entity's suspicion.

39E Exemptions—specified conditions

Section 28 (undertaking initial customer due diligence) does not apply to a reporting entity in respect of the provision of a designated service to a customer if:

- (a) the designated service is specified in column 1 of an item of the following table; and
- (b) the conditions (if any) specified in column 2 of the item are satisfied; and
- (c) the reporting entity does not have an enhanced due diligence obligation in relation to the customer under section 32.

Exemptions—specified conditions

Item	Column 1 Designated service	Column 2 Conditions
1	item 2 or 3 of table 1 in section 6	(a) the reporting entity providing the designated service is a financial institution; and (b) the designated service: <ul style="list-style-type: none"> (i) relates to a correspondent banking relationship; and (ii) occurs in circumstances where there is a geographical link in accordance with section 100; and (iii) relates to signatories to the account who are employees of the other financial institution
2	paragraph (a) of item 17 of table 1 in section 6	(a) the reporting entity issues a cheque that the reporting entity draws on itself; and (b) the cheque is drawn from an account held at the issuing ADI, building society, credit union or representative office of a foreign bank; and (c) the cheque contains details of the payee; and (d) the face value of the cheque is less than \$5,000
3	paragraph (a) of item 17 of table 1 in section 6	(a) the reporting entity issues a cheque that the reporting entity draws on itself; and (b) the cheque is funded by physical currency; and (c) the face value of the cheque is less than \$1,000
4	item 25 or 26 of table 1 in	the sum of the face value of the traveller's

Schedule 10 Exemptions

Exemptions—specified conditions		
Item	Column 1 Designated service	Column 2 Conditions
	section 6	cheque or traveller’s cheques issued, cashed or redeemed in any one transaction is less than \$1,000
5	item 25 or 26 of table 1 in section 6	(a) the issuing, cashing or redeeming of the traveller’s cheque or traveller’s cheques is one of 2 or more transactions that the reporting entity reasonably believes to be linked; and (b) the sum of the face value of the traveller’s cheque or traveller’s cheques issued, cashed or redeemed as part of the linked transactions is less than \$1,000
6	item 33 of table 1 in section 6	(a) the designated service is a disposal; and (b) the disposal occurs on a prescribed financial market (within the meaning of the <i>Corporations Act 2001</i>); and (c) the agent gives the proceeds of the disposal directly to an ancillary fund (within the meaning of the <i>Income Tax Assessment Act 1997</i>) that provides an undertaking to: (i) distribute, by cheque or electronic funds transfer, the proceeds of the disposal of the security to a deductible gift recipient; and (ii) list on its public website within 14 business days, for a period of 12 months, the details of the distribution of the proceeds of the disposal of the security to the deductible gift recipient; and (d) the value of the security does not exceed \$10,000
7	paragraph (a) of item 43 of table 1 in section 6	(a) no additional contributions from the customer are accepted in relation to the interest; and (b) the whole of the interest of the customer in the superannuation fund is cashed out; and

Exemptions—specified conditions		
	Column 1	Column 2
Item	Designated service	Conditions
		<ul style="list-style-type: none"> (c) the account in which the interest of the customer in the superannuation fund was held is closed as soon as practicable after the cashing out of that interest; and (d) the application for the interest in the superannuation fund to be cashed out was not made online using the Departing Australia Superannuation Payment internet-based application system administered by the Australian Taxation Office; and (e) on the date the customer applies for the interest in the superannuation fund to be cashed out, the value of the interest does not exceed \$1,000
8	item 43 or 45 of table 1 in section 6	<ul style="list-style-type: none"> (a) the application of the member relates to the cashing out of the interest held by the customer in: <ul style="list-style-type: none"> (i) a superannuation fund; or (ii) an approved deposit fund; or (iii) a RSA; and (b) the application was made online using the Departing Australia Superannuation Payment internet-based application system administered by the Australian Taxation Office; and (c) the whole of the interest of the member is cashed out; and (d) no additional contributions from the customer are accepted in relation to the customer's interest; and (e) the account in which the interest of the customer was held is closed as soon as practicable after the cashing out of that interest; and (f) the value of the interest in the customer's superannuation fund, approved deposit fund or RSA does not exceed \$5,000 on

Schedule 10 Exemptions

Exemptions—specified conditions		
Item	Column 1 Designated service	Column 2 Conditions
		the date of the application
9	item 50 of table 1 or item 14 of table 3 in section 6	(a) currency is moved into or out of an account; and (b) the provider of the account is an ADI, a building society, a bank, a credit union or a representative office of a foreign bank; and (c) the value of the currency is less than \$1,000
10	item 50 of table 1 or item 14 of table 3 in section 6	(a) currency is not moved into or out of an account where the account provider is an ADI, a building society, a bank, a credit union or a representative office of a foreign bank; and (b) either or both of the following apply: (i) the proceeds are in the form of physical currency; (ii) the funding source is in the form of physical currency; and (c) the value of the currency is less than \$1,000
11	item 1 of table 2 in section 6	the retail value of the bullion is less than \$5,000
12	item 1, 2, 4, 6, 7, 8 or 9 of table 3 in section 6	(a) the reporting entity is a casino; and (b) the designated service does not involve online gambling services; and (c) the designated service involves an amount of less than \$5,000
13	item 1, 2, 4, 6, 7, 8 or 9 of table 3 in section 6	(a) the reporting entity is a casino; and (b) the designated service does not involve online gambling services; and (c) the designated service involves the customer giving or receiving only gaming chips or tokens; and (d) the designated service involves an amount of \$5,000 or more
14	item 1 or 2 of table 3 in	the reporting entity providing the designated

Exemptions—specified conditions		
	Column 1	Column 2
Item	Designated service	Conditions
	section 6	service is an on-course bookmaker or a totalisator agency board
15	item 4, 7 or 8 of table 3 in section 6	(a) the reporting entity is an on-course bookmaker or totalisator agency board; and (b) the designated service involves an amount of less than \$5,000
16	item 5 or 6 of table 3 in section 6	(a) the designated service is provided by the reporting entity by way of a gaming machine; and (b) the designated service is not provided at a casino
17	item 8, 9 or 10 of table 3 in section 6	(a) the designated service is provided by the reporting entity by way of a gaming machine; and (b) the designated service is not provided at a casino; and (c) the designated service involves an amount of less than \$5,000

39F Exemption—intermediary institutions

- (1) Divisions 1 to 6 do not apply to a designated service covered by item 31 of table 1 in section 6.

Note: Item 31 of table 1 in section 6 deals with an intermediary institution passing on a transfer message in a value transfer chain.

- (2) A reporting entity must monitor its customers, in relation to the provision of a designated service covered by item 31 of table 1 in section 6 at or through a permanent establishment of the reporting entity in Australia, to identify unusual transactions and behaviours of the customers (within the meaning of section 30) that may give rise to a suspicious matter reporting obligation.

Note: For *suspicious matter reporting obligation*, see section 41.

- (3) Subsection (2) is a civil penalty provision.

- (4) A reporting entity that contravenes subsection (2) commits a separate contravention of that subsection in respect of each designated service that the reporting entity provides to a customer.

8 At the end of section 44 (after the note)

Add:

- (7) Section 43 does not apply to a designated service that is:
- (a) provided by a reporting entity that is an ADI; and
 - (b) provided to a customer that is an ADI.
- (8) Section 43 does not apply to a designated service that is:
- (a) provided by a reporting entity that is the holder of an exchange settlement account; and
 - (b) provided to a customer that is the holder of an exchange settlement account; and
 - (c) provided using the exchange settlement accounts held by the reporting entity and the customer.

9 Section 106

Repeal the section.

10 Section 107

Repeal the section, substitute:

107 Transaction records to be retained

Retention of records

- (1) If a reporting entity commences to provide, or provides, a designated service to a customer, the reporting entity must retain sufficient records to allow the reconstruction of individual transactions relating to the provision of the designated service to the customer.
- (2) A record under subsection (1) must comply with any requirements specified by the AML/CTF Rules.

Period for which records must be retained

- (3) A person who is or was a reporting entity must retain a record referred to in subsection (1) for a period of 7 years beginning on the day the record is made.

Civil penalty

- (4) Subsections (1) and (3) are civil penalty provisions.

AML/CTF Rules

- (5) The AML/CTF Rules may specify kinds of records to which this section does not apply.

11 After Part 17A

Insert:

Part 17B—Exemptions

233H Simplified outline

The following is a simplified outline of this Part:

- | |
|--|
| <ul style="list-style-type: none">• This Part provides that certain provisions of this Act do not apply to certain persons, or in certain circumstances. |
|--|

233J Exemption—Reserve Bank of Australia

The following provisions of this Act do not apply to the Reserve Bank of Australia:

- (a) Part 1A;
- (b) Divisions 2 to 7 (other than section 39) of Part 2;
- (c) Divisions 3 to 6 (other than section 49) of Part 3;
- (d) Parts 4, 5 and 8;
- (e) Divisions 3 to 6 of Part 10;
- (f) section 236B.

233K Exemption—operating no more than 15 gaming machines

Scope

- (1) This section applies to a reporting entity if:
 - (a) the reporting entity and any related entity (within the meaning of the *Corporations Act 2001*) that is a reporting entity have a total entitlement under licences issued by one or more States or Territories to operate no more than 15 gaming machines; and
 - (b) the reporting entity and any related entity (within the meaning of the *Corporations Act 2001*) that is a reporting entity only provide one or more designated services covered by any of the following:
 - (i) item 5 of table 3 in section 6;
 - (ii) item 6 of table 3 in section 6;
 - (iii) item 8 of table 3 in section 6;
 - (iv) item 9 of table 3 in section 6;
 - (v) item 10 of table 3 in section 6; and
 - (c) the provision of any designated services referred to in subparagraph (b)(ii), (iii) or (iv) involves a game played on a gaming machine.

Exemption

- (2) The following provisions of the Act do not apply to the reporting entity:
 - (a) Part 1A;
 - (b) Divisions 2 to 6 of Part 2;
 - (c) sections 37 and 38 of Division 7 of Part 2;
 - (d) section 43;
 - (e) section 45;
 - (f) Division 5 of Part 3;
 - (g) Part 5;
 - (h) Division 1 of Part 10;
 - (i) sections 109 and 110;
 - (j) Divisions 3 to 7 of Part 10;
 - (k) section 236B.

Schedule 11—Repeal of the Financial Transaction Reports Act 1988

Part 1—Repeals

Financial Transaction Reports Act 1988

1 The whole of the Act

Repeal the Act.

Part 2—Consequential amendments

Division 1—Amendment of the Anti-Money Laundering and Counter-Terrorism Financing Act 2006

Anti-Money Laundering and Counter-Terrorism Financing Act 2006

2 Section 5 (paragraph (g) of the definition of *AUSTRAC entrusted person*)

Omit “repealed section 40A of the”, substitute “section 40A of the repealed”.

3 Section 5 (note to the definition of *AUSTRAC entrusted person*)

Before “*Financial*”, insert “repealed”.

4 Section 5 (paragraph (d) of the definition of *AUSTRAC information*)

After “1988”, insert “, as in force immediately before its repeal”.

5 Subsection 49(1)

After “CEO under section 41, 43 or 45”, insert “of this Act, or a reporting entity communicated information to the AUSTRAC CEO under subsection 16(1) or (1A) of the repealed *Financial Transaction Reports Act 1988*”.

6 Subparagraph 49(1)(i)(ii)

After “45”, insert “of this Act, or subsection 16(1) or (1A) of the repealed *Financial Transaction Reports Act 1988*,”.

7 Subsection 50A(3)

Before “*Financial*”, insert “repealed”.

8 At the end of Division 3 of Part 10

Add:

**114B Retention of records made or obtained under the repealed
*Financial Transaction Reports Act 1988***

- (1) This section applies to a reporting entity if, immediately before this section commences, the reporting entity is retaining a record or a copy of a record, for the purposes of Part III of the *Financial Transaction Reports Act 1988*, in relation to a customer to whom the reporting entity has provided, or is providing, a designated service.
- (2) The reporting entity must continue to retain the record, or a copy of the record, until the end of the first 7-year period throughout the whole of which the reporting entity did not provide any designated services to the customer.

Civil penalty

- (3) Subsection (2) is a civil penalty provision.

Designated business groups

- (4) If:
 - (a) a reporting entity is a member of a designated business group; and
 - (b) such other conditions (if any) as are specified in the AML/CTF Rules are satisfied;the obligation imposed on the reporting entity by subsection (2) may be discharged by any other member of the group.

9 Paragraph 121(2)(a)

Before “*Financial*”, insert “repealed”.

10 Subsection 123(10)

Before “*Financial*”, insert “repealed”.

11 At the end of subparagraph 124(1)(a)(i)

Add “of this Act or subsection 16(1) or (1A) of the repealed *Financial Transaction Reports Act 1988*”.

12 Subparagraph 124(1)(a)(iv)

Omit “section 41; and”, substitute “section 41 of this Act or subsection 16(1) or (1A) of the repealed *Financial Transaction Reports Act 1988*”.

13 At the end of paragraph 124(1)(a)

Add:

- (v) information given under subsection 16(4) of the repealed *Financial Transaction Reports Act 1988*; and

14 Subparagraph 124(1)(b)(i)

After “subsection 41(2)”, insert “of this Act or subsection 16(1) or (1A) of the repealed *Financial Transaction Reports Act 1988*”.

15 Subparagraph 124(1)(b)(ii)

After “subsection 41(2)”, insert “of this Act or subsection 16(1) or (1A) of the repealed *Financial Transaction Reports Act 1988*”.

16 Subparagraph 124(1)(b)(iii)

After “subsection 41(2)”, insert “of this Act or subsection 16(1) or (1A) of the repealed *Financial Transaction Reports Act 1988*”.

17 Subparagraph 124(1)(b)(iv)

After “section 41”, insert “of this Act or subsection 16(1) or (1A) of the repealed *Financial Transaction Reports Act 1988*”.

18 At the end of subparagraph 124(1)(b)(v)

Add “of this Act or subsection 16(1) or (1A) of the repealed *Financial Transaction Reports Act 1988*”.

19 Paragraph 124(2)(b)

Before “*Financial*”, insert “repealed”.

20 Paragraph 126(3A)(c)

Before “*Financial*”, insert “repealed”.

21 Section 134

Before “*Financial*”, insert “repealed”.

22 Paragraph 175(3)(g)

Before “*Financial*”, insert “repealed”.

23 Subsection 184(4) (before paragraph (g) of the definition of *designated infringement notice provision*)

Insert:

(fl) subsection 114B(2) (which deals with retaining certain records made or obtained under the repealed *Financial Transaction Reports Act 1988*);

24 Subsection 209(1)

Before “*Financial*”, insert “repealed”.

25 Subsection 211(3)

Before “*Financial*”, insert “repealed”.

Division 2—Amendments of other Acts

Australian Securities and Investments Commission Act 2001

26 Section 243D

Repeal the section.

Commonwealth Electoral Act 1918

27 Subsection 90B(4) (table item 5)

Repeal the item.

28 Paragraph 90B(9)(b)

Omit “5,”.

29 Subsection 91A(2C)

Repeal the subsection.

30 Subsection 91B(3)

Omit “5”.

Criminal Code Act 1995

31 Paragraphs 400.9(2)(a) and (d) of the *Criminal Code*

Before “*Financial*”, insert “repealed”.

Freedom of Information Act 1982

32 Subparagraph 7(2G)(a)(i)

Before “*Financial*”, insert “repealed”.

Proceeds of Crime Act 2002

33 Subsection 29(3)

Before “*Financial*”, insert “repealed”.

34 Section 338 (paragraphs (c), (d) and (e) of the definition of *serious offence*)

Before “*Financial*”, insert “repealed”.

Surveillance Devices Act 2004

35 Subsection 6(1) (paragraph (c) of the definition of *relevant offence*)

Before “*Financial*”, insert “repealed”.

Part 3—Transitional provisions

36 Reports of suspect transactions

Despite the repeal of the *Financial Transaction Reports Act 1988* by this Schedule, section 16 of that Act (as in force immediately before the commencement of this item) continues to apply on and after that commencement, as if that section had not been repealed, in relation to a communication of information of a kind referred to in paragraph (5A)(a), (b) or (c) or (5AA)(a) or (b) of that section.

Schedule 12—Transitional rules

1 Transitional rules

- (1) The Minister may, by legislative instrument, make rules prescribing matters of a transitional nature (including prescribing any saving or application provisions) relating to the amendments or repeals made by this Act.
- (2) Without limiting subitem (1), rules made under this item before the end of the period of 4 years starting on the day this Schedule commences may provide that provisions of this Act, the *Anti-Money Laundering and Counter-Terrorism Financing Act 2006*, or any other Act or instrument, have effect with any modifications prescribed by the rules. Those provisions then have effect as if they were so modified.
- (3) To avoid doubt, the rules may not do the following:
 - (a) create an offence or civil penalty;
 - (b) provide powers of:
 - (i) arrest or detention; or
 - (ii) entry, search or seizure;
 - (c) impose a tax;
 - (d) set an amount to be appropriated from the Consolidated Revenue Fund under an appropriation in this Act;
 - (e) directly amend the text of this Act.
- (4) This Act (other than subitem (3)) does not limit the rules that may be made under this item.

[Minister's second reading speech made in—
House of Representatives on 11 September 2024
Senate on 10 October 2024]

(109/24)