





# **Anti-Money Laundering and Counter-Terrorism Financing and Other Legislation Amendment Act 2020**

**No. 133, 2020**

**An Act to amend the law relating to the combatting  
of money laundering and financing of terrorism  
and to the Australian Federal Police, 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. 133, 2020**

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**An Act to amend the law relating to the combatting of money laundering and financing of terrorism and to the Australian Federal Police, and for related purposes**

*[Assented to 17 December 2020]*

The Parliament of Australia enacts:

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*No. 133, 2020    Anti-Money Laundering and Counter-Terrorism Financing and Other    1*  
*Legislation Amendment Act 2020*

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## 1 Short title

This Act is the *Anti-Money Laundering and Counter-Terrorism Financing and Other Legislation Amendment Act 2020*.

## 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.

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<b>Commencement information</b>		
<b>Column 1</b>	<b>Column 2</b>	<b>Column 3</b>
<b>Provisions</b>	<b>Commencement</b>	<b>Date/Details</b>
1. Sections 1 to 3 and anything in this Act not elsewhere covered by this table	The day this Act receives the Royal Assent.	17 December 2020
2. Schedule 1, Parts 1 to 4	A day or days to be fixed by Proclamation. However, if any of the provisions do not commence within the period of 6 months beginning on the day this Act receives the Royal Assent, they commence on the day after the end of that period.	
3. Schedule 1, Part 5	A single day to be fixed by Proclamation. However, if the provisions do not commence within the period of 18 months beginning on the day this Act receives the Royal Assent, they commence on the day after the end of that period.	
4. Schedule 1, Parts 6 and 7	The day after this Act receives the Royal Assent.	18 December 2020

Note: This table relates only to the provisions of this Act as originally enacted.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—Amendments

### Part 1—Identification procedures

#### *Anti-Money Laundering and Counter-Terrorism Financing Act 2006*

##### 1 Section 32

Repeal the section, substitute:

##### **32 Carrying out applicable customer identification procedure before commencement of provision of designated service**

- (1) A reporting entity must not commence to provide a designated service to a customer unless the reporting entity has carried out the applicable customer identification procedure in respect of the customer.

Note 1: See the definition of *commence to provide a designated service* in section 5.

Note 2: See sections 37A and 38 (when applicable customer identification procedure taken to be carried out by a reporting entity).

Note 3: See section 41 for reports of suspicious matters when a reporting entity proposes to provide a designated service to a customer.

##### *Exceptions*

- (2) Subsection (1) does not apply if:
- (a) there are special circumstances that justify carrying out the applicable customer identification procedure in respect of the customer after the commencement of the provision of the designated service (see section 33); or
  - (b) the reporting entity has previously carried out the applicable customer identification procedure in respect of the customer; or
  - (c) section 28 or 30 applies to the provision of the designated service.

*Civil penalty*

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

**2 Subsection 34(1) (note 2)**

Omit “section 38”, substitute “sections 37A and 38”.

**3 Subsection 35(1) (note)**

Omit “section 38”, substitute “sections 37A and 38”.

**4 At the end of subsection 37(1)**

Add:

Note: The reporting entity (and not its agent) will be liable to civil penalties for contraventions of this Part for providing designated services to its customers without carrying out the applicable customer identification procedures in respect of its customers.

**5 After section 37**

Insert:

**37A Reliance on applicable customer identification procedures or other procedures—agreements or arrangements**

(1) This section applies if:

- (a) a reporting entity (the *first entity*) enters into a written agreement or arrangement with another person relating to the first entity’s reliance on applicable customer identification procedures, or other procedures of a kind prescribed by the AML/CTF Rules, carried out by the other person; and
- (b) at the time of entering into the agreement or arrangement, the first entity had reasonable grounds to believe that each of the requirements prescribed by the AML/CTF Rules were met.

(2) If:

- (a) the agreement or arrangement is in force; and
- (b) the first entity has complied with section 37B in relation to the agreement or arrangement; and
- (c) the first entity is providing, or proposes to provide, a designated service to a customer; and

**Schedule 1** Amendments

**Part 1** Identification procedures

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(d) under the agreement or arrangement, the first entity has obtained information about the identity of that customer from the other party to the agreement or arrangement; and

(e) the requirements prescribed by the AML/CTF Rules are satisfied;

this Act (other than Part 10) has effect as if the first entity had carried out the applicable customer identification procedure in respect of that customer and that designated service.

(3) If:

(a) the agreement or arrangement is in force; and

(b) after completing an assessment under section 37B in relation to the agreement or arrangement, the first entity does not have reasonable grounds to believe that each of the requirements prescribed by the AML/CTF Rules for the purposes of paragraph (1)(b) is being met;

then subsection (2) does not apply in relation to the first entity and the agreement or arrangement in connection with the carrying out of procedures covered by paragraph (1)(a) after the completion of that assessment.

(4) Subsection (3) ceases to apply once the first entity has reasonable grounds to believe that each of the requirements prescribed by the AML/CTF Rules for the purposes of paragraph (1)(b) is being met.

**37B Regular assessments of agreement or arrangement covered by section 37A**

(1) If a reporting entity enters into an agreement or arrangement of a kind referred to in subsection 37A(1), then, while the agreement or arrangement is in force, the reporting entity must:

(a) carry out assessments in accordance with the AML/CTF Rules; and

(b) carry out those assessments at the times worked out in accordance with the AML/CTF Rules; and

(c) prepare a written record of each assessment within 10 business days after the day of completing the assessment.

*Civil penalty*

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

**6 Section 38**

Repeal the section, substitute:

**38 Reliance on applicable customer identification procedures or other procedures—other circumstances**

If:

- (a) a reporting entity (the *first entity*) is providing, or proposes to provide, a designated service to a customer; and
- (b) another person has carried out an applicable customer identification procedure, or another procedure of a kind prescribed by the AML/CTF Rules, in respect of that customer; and
- (c) the first entity has obtained, from the other person, information about the identity of that customer that was obtained by the other person in the course of carrying out that procedure; and
- (d) the first entity has reasonable grounds to believe that it is appropriate to rely on that procedure in relation to that designated service having regard to the risk the first entity may reasonably face that the provision of that designated service might (whether inadvertently or otherwise) involve or facilitate money laundering or financing of terrorism; and
- (e) the requirements prescribed by the AML/CTF Rules are satisfied;

this Act (other than Part 10) has effect as if the first entity had carried out the applicable customer identification procedure in respect of that customer and that designated service.

**7 Section 104**

Omit:

- A reporting entity must retain a record of an applicable customer identification procedure for 7 years after the end of the reporting entity's relationship with the relevant customer.

substitute:

- A reporting entity must retain records relating to:
  - (a) applicable customer identification procedures it carries out or that it is taken to have carried out; and
  - (b) assessments it carries out of agreements or arrangements it has entered into relating to its reliance on applicable customer identification procedures, or other procedures, carried out by another person.

### **8 Division 3 of Part 10 (heading)**

Repeal the heading, substitute:

### **Division 3—Records in connection with the carrying out of identification procedures**

### **9 Section 114**

Repeal the section, substitute:

### **114 Retention of information if identification procedures taken to have been carried out by a reporting entity**

(1) If:

- (a) a person (the *first person*) carries out a procedure (the *initial procedure*) mentioned in paragraph 37A(1)(a) or 38(b); and
- (b) under section 37A or 38 and in connection with the initial procedure, Part 2 has effect as if a reporting entity had carried out an applicable customer identification procedure in respect of a customer; and
- (c) the first person makes a record of the initial procedure and gives a copy of the record to the reporting entity;

the reporting entity must retain the copy until the end of the first 7-year period:

- (d) that began at a time after Part 2 had that effect; and
- (e) throughout the whole of which the reporting entity did not provide any designated services to the customer.

*Civil penalty*

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

**114A Retention of records of assessments of agreements or arrangements covered by section 37A**

- (1) If a reporting entity prepares a record under paragraph 37B(1)(c), the reporting entity must retain the record, or a copy of the record, for 7 years after the completion of the preparation of the record.

*Civil penalty*

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

**10 Application and saving provisions**

- (1) The repeal and substitution of section 32 of the *Anti-Money Laundering and Counter-Terrorism Financing Act 2006* made by this Part applies in relation to a designated service that commences to be provided on or after the commencement of this item.
- (2) Section 37A of the *Anti-Money Laundering and Counter-Terrorism Financing Act 2006*, as inserted by this Part, applies in relation to an agreement or arrangement entered into on or after the commencement of this item.
- (3) Section 38 of the *Anti-Money Laundering and Counter-Terrorism Financing Act 2006*, as substituted by this Part, applies in relation to a designated service referred to in paragraph 38(a) of that Act that is provided on or after the commencement of this item (whether the procedure referred to in paragraph 38(b) of that Act was carried out before, on or after that commencement).
- (4) Section 38 of the *Anti-Money Laundering and Counter-Terrorism Financing Act 2006*, as in force immediately before the commencement of this item, continues to apply on and after that commencement in

**Schedule 1** Amendments

**Part 1** Identification procedures

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relation to a designated service referred to in paragraph 38(c) of that Act (as so in force) that was provided before that commencement.

- (5) Section 114 of the *Anti-Money Laundering and Counter-Terrorism Financing Act 2006*, as in force immediately before the commencement of this item, continues to apply on and after that commencement in relation to applications of subsection 114(1) of that Act before that commencement.

## **Part 2—Correspondent banking**

### ***Anti-Money Laundering and Counter-Terrorism Financing Act 2006***

#### **11 Sections 94 to 99**

Repeal the sections, substitute:

#### **94 Simplified outline of this Part**

- A financial institution must not enter into a correspondent banking relationship with:
  - (a) a shell bank; or
  - (b) another financial institution that has a correspondent banking relationship with a shell bank; or
  - (c) another financial institution that permits its accounts to be used by a shell bank.
  
- A financial institution must carry out due diligence assessments before it enters into, and while it is in, a correspondent banking relationship with another financial institution involving a vostro account.

#### **95 Prohibitions on correspondent banking relationships involving shell banks**

##### *Entry*

- (1) A financial institution must not enter into a correspondent banking relationship with another person if:
  - (a) the other person is a shell bank; or
  - (b) the other person is a financial institution that has a correspondent banking relationship with a shell bank; or
  - (c) the other person is a financial institution that permits its accounts to be used by a shell bank.

Note: For geographical links, see section 100.

*Termination*

- (2) If a financial institution (the ***first institution***) is in a correspondent banking relationship with another person and the first institution becomes aware that:
- (a) the other person is a shell bank; or
  - (b) the other person is a financial institution that has a correspondent banking relationship with a shell bank; or
  - (c) the other person is a financial institution that permits its accounts to be used by a shell bank;
- the first institution must, within 20 days after becoming so aware or such longer period (if any) as the AUSTRAC CEO allows, do one of the following:
- (d) terminate the correspondent banking relationship;
  - (e) if paragraph (b) applies—request the other financial institution to terminate the correspondent banking relationship mentioned in that paragraph.

Note: For geographical links, see section 100.

- (3) If:
- (a) the first institution makes a request under paragraph (2)(e) of another financial institution; and
  - (b) at the end of the period (the ***first period***) of 20 business days after the request was made, the other financial institution has not complied with the request;
- the first institution must terminate its correspondent banking relationship with the other financial institution within 20 days after the end of the first period or such longer period (if any) as the AUSTRAC CEO allows.

Note: For geographical links, see section 100.

*Civil penalty*

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

## **96 Due diligence assessments and records of correspondent banking relationships**

### *Entry*

- (1) A financial institution (the ***first institution***) must not enter into a correspondent banking relationship with another financial institution that will involve a vostro account unless:
  - (a) the first institution carries out a due diligence assessment in accordance with the AML/CTF Rules and prepares a written record of the assessment; and
  - (b) a senior officer of the first institution approves the entering into of that relationship, having regard to such matters (if any) as are specified in the AML/CTF Rules.

Note: For geographical links, see section 100.

- (2) If a financial institution (the ***first institution***) enters into a correspondent banking relationship with another financial institution that involves a vostro account, the first institution must, within 20 business days after the day of entering into the relationship, prepare a written record that sets out:
  - (a) its responsibilities under that relationship; and
  - (b) the responsibilities of the other financial institution under that relationship.

### *Ongoing assessments*

- (3) If a financial institution (the ***first institution***) is in a correspondent banking relationship with another financial institution that involves a vostro account, the first institution must:
  - (a) carry out due diligence assessments in accordance with the AML/CTF Rules; and
  - (b) carry out those assessments at the times worked out in accordance with the AML/CTF Rules; and
  - (c) in relation to each assessment, prepare a written record of the assessment within 10 business days after the day of completing the assessment; and
  - (d) in relation to each assessment, ensure that, within 20 business days after the preparation of the written record, a senior officer of the first institution reviews the written record and

makes a decision about whether the first institution should remain in a correspondent banking relationship with the other financial institution.

Note: For geographical links, see section 100.

*Civil penalty*

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

**12 Division 6 of Part 10 (heading)**

Repeal the heading, substitute:

**Division 6—Records about correspondent banking relationships**

**13 Section 117 (heading)**

Repeal the heading, substitute:

**117 Retention of records about correspondent banking relationships**

**14 Subsection 117(1)**

Omit “subsection 97(2) or 98(2)”, substitute “section 96”.

**15 Paragraph 1(5)(a) of Schedule 1**

Omit “, 96 or 99”.

**16 Paragraph 1(5)(b) of Schedule 1**

Omit “96, 97 or 98”, substitute “95 or 96”.

**17 Application provisions**

- (1) Subsection 95(1) of the *Anti-Money Laundering and Counter-Terrorism Financing Act 2006*, as substituted by this Part, applies in relation to a correspondent banking relationship first mentioned in that subsection that is entered into on or after the commencement of this item.
- (2) Subsection 95(2) of the *Anti-Money Laundering and Counter-Terrorism Financing Act 2006*, as substituted by this Part, applies on and after the commencement of this item in relation to a correspondent banking

relationship first mentioned in that subsection that was entered into before, on or after that commencement, where the first institution becomes aware as mentioned in that subsection on or after that commencement.

- (3) Subsections 96(1) and (2) of the *Anti-Money Laundering and Counter-Terrorism Financing Act 2006*, as substituted by this Part, apply in relation to a correspondent banking relationship that is entered into on or after the commencement of this item.
- (4) Subsection 96(3) of the *Anti-Money Laundering and Counter-Terrorism Financing Act 2006*, as substituted by this Part, applies on and after the commencement of this item in relation to a correspondent banking relationship that was entered into before, on or after that commencement, where the assessments are required to be carried out on or after that commencement.

## **18 Saving provisions**

- (1) Section 95 of the *Anti-Money Laundering and Counter-Terrorism Financing Act 2006*, as in force immediately before the commencement of this item, continues to apply on and after that commencement in relation to a correspondent banking relationship first mentioned in that section that was entered into before that commencement.
- (2) Section 96 of the *Anti-Money Laundering and Counter-Terrorism Financing Act 2006*, as in force immediately before the commencement of this item, continues to apply on and after that commencement in relation to a correspondent banking relationship first mentioned in that section that was entered into before that commencement, where the first financial institution became aware as mentioned in that section before that commencement.
- (3) Section 97 of the *Anti-Money Laundering and Counter-Terrorism Financing Act 2006*, as in force immediately before the commencement of this item, continues to apply on and after that commencement in relation to a correspondent banking relationship that was entered into before that commencement.
- (4) Section 98 of the *Anti-Money Laundering and Counter-Terrorism Financing Act 2006*, as in force immediately before the commencement of this item, continues to apply on and after that commencement in

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**Part 2** Correspondent banking

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relation to a correspondent banking relationship that was entered into before that commencement, where the assessments were required to be carried out before that commencement.

- (5) Section 99 of the *Anti-Money Laundering and Counter-Terrorism Financing Act 2006*, as in force immediately before the commencement of this item, continues to apply on and after that commencement in relation to a correspondent banking relationship that was entered into before that commencement.
- (6) Section 117 of the *Anti-Money Laundering and Counter-Terrorism Financing Act 2006*, as in force immediately before the commencement of this item, continues to apply on and after that commencement in relation to a record prepared under subsection 97(2) or 98(2) of that Act before that commencement.

## **Part 3—Tipping-off offence**

### ***Anti-Money Laundering and Counter-Terrorism Financing Act 2006***

#### **19 Subsections 123(1), (2) and (3)**

Repeal the subsections, substitute:

##### *Prohibitions*

- (1) A reporting entity must not disclose to a person other than an AUSTRAC entrusted person:
  - (a) that the reporting entity has given, or is required to give, a report under subsection 41(2); or
  - (b) any information from which it could reasonably be inferred that the reporting entity has given, or is required to give, that report.
  
- (2) If:
  - (a) a reporting entity gives a report to the AUSTRAC CEO under section 41, 43 or 45; and
  - (b) in connection with that report, the reporting entity (the **recipient**) or another person (also the **recipient**) is required by a notice under subsection 49(1) to give information or produce a document;  
the recipient must not disclose to a person (except an AUSTRAC entrusted person, the person who gave the notice or any other person who has given a notice to the recipient under subsection 49(1) in connection with that report):
    - (c) that the recipient is or has been required by a notice under subsection 49(1) to give information or produce a document;  
or
    - (d) that the information has been given or the document has been produced; or
    - (e) any information from which it could reasonably be inferred that:

- (i) the recipient had been required under subsection 49(1) to give information or produce a document; or
- (ii) the information had been given under subsection 49(1); or
- (iii) the document had been produced under subsection 49(1).

**20 Subsection 123(4) (heading)**

Repeal the heading, substitute:

*Exception—crime prevention*

**21 Subsection 123(4)**

Omit “Subsection (2)”, substitute “Subsection (1)”.

**22 Before subsection 123(5)**

Insert:

*Exception—legal advice*

**23 Subsection 123(5)**

Omit “Subsection (2)”, substitute “Subsection (1)”.

**24 After subsection 123(5A)**

Insert:

*Exception—audit or review of anti-money laundering and counter-terrorism financing program*

- (5B) Subsection (1) does not apply to the disclosure of information by a reporting entity if the disclosure is to a person appointed or engaged by the reporting entity to audit or review the reporting entity’s anti-money laundering and counter-terrorism financing program.

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

- (5C) A person to whom information has been disclosed under subsection (5B) must not disclose the information unless the

disclosure is made to another person in connection with the audit or review of the reporting entity's anti-money laundering and counter-terrorism financing program.

*Exception—Charter of the United Nations Act 1945*

## **25 Subsection 123(6)**

Omit "Subsection (2)", substitute "Subsection (1)".

## **26 Subsections 123(7) and (7AA)**

Repeal the subsections, substitute:

*Exception—members of a corporate group*

- (7) Subsection (1) does not apply to the disclosure of information by a reporting entity (the *first entity*) if:
- (a) the first entity belongs to a corporate group; and
  - (b) the information relates to the affairs of a person (the *relevant person*) who is, or was, a customer of the first entity or who made inquiries referred to in subparagraph 41(1)(c)(i) of the first entity; and
  - (c) the disclosure is made to a body corporate (the *related body corporate*) that belongs to the corporate group; and
  - (d) the related body corporate is a reporting entity or is regulated by one or more laws of a foreign country that give effect to some or all of the FATF Recommendations; and
  - (e) if the related body corporate is regulated by one or more laws of a foreign country that give effect to some or all of the FATF Recommendations—the related body corporate has given the first entity a written undertaking for:
    - (i) protecting the confidentiality of information that may be disclosed to the related body corporate under this subsection; and
    - (ii) controlling the use that will be made of the information; and
    - (iii) ensuring that the information will be used only for the purpose for which it is disclosed to the related body corporate; and

- (f) the disclosure is made for the purpose of informing the related body corporate about the risks involved in dealing with the relevant person.

Note: A defendant bears an evidential burden in relation to the matter in subsection (7) (see subsection 13.3(3) of the *Criminal Code*).

- (7AA) A reporting entity to whom information has been disclosed under subsection (7) must not disclose the information unless:
  - (a) the disclosure is made to another reporting entity that belongs to the corporate group; and
  - (b) the disclosure is made for the purpose of informing the other reporting entity about the risks involved in dealing with the relevant person.

*Exception—members of a designated business group*

- (7AB) Subsection (1) does not apply to the disclosure of information by a reporting entity (the **first entity**) if:
  - (a) the first entity belongs to a designated business group; and
  - (b) the information relates to the affairs of a person (the **relevant person**) who is, or was, a customer of the first entity or who made inquiries referred to in subparagraph 41(1)(c)(i) of the first entity; and
  - (c) the disclosure is made to another person (the **related person**) that belongs to the designated business group; and
  - (d) the related person is a reporting entity or is regulated by one or more laws of a foreign country that give effect to some or all of the FATF Recommendations; and
  - (e) if the related person is regulated by one or more laws of a foreign country that give effect to some or all of the FATF Recommendations—the related person has given the first entity a written undertaking for:
    - (i) protecting the confidentiality of information that may be disclosed to the related person under this subsection; and
    - (ii) controlling the use that will be made of the information; and

(iii) ensuring that the information will be used only for the purpose for which it is disclosed to the related person; and

(f) the disclosure is made for the purpose of informing the related person about the risks involved in dealing with the relevant person.

Note: A defendant bears an evidential burden in relation to the matter in subsection (7AB) (see subsection 13.3(3) of the *Criminal Code*).

(7AC) A reporting entity to whom information has been disclosed under subsection (7AB) must not disclose the information unless:

(a) the disclosure is made to another reporting entity that belongs to the designated business group; and

(b) the disclosure is made for the purpose of informing the other reporting entity about the risks involved in dealing with the relevant person.

*Exception—remittance sector*

**27 Subsection 123(7A)**

Omit “Subsection (2)”, substitute “Subsection (1)”.

**28 Before subsection 123(8)**

Insert:

*Exception—ADI*

**29 Subsection 123(8)**

Omit “Subsection (2)”, substitute “Subsection (1)”.

**30 Before subsection 123(9)**

Insert:

*Exception—compliance with the law or law enforcement*

**31 Subsection 123(9)**

Omit “Subsection (2)”, substitute “Subsection (1)”.

**32 Before subsection 123(10)**

Insert:

*Courts or tribunals*

**33 Subsection 123(10)**

Omit “, (2) or (3)”, substitute “or (2)”.

**34 Paragraph 123(11)(a)**

Omit “(3),”.

**35 Paragraph 123(11)(a)**

After “(5A),”, insert “(5C),”.

**36 Paragraph 123(11)(a)**

After “(7AA),”, insert “(7AC),”.

**37 Application provision**

The amendments of section 123 of the *Anti-Money Laundering and Counter-Terrorism Financing Act 2006* made by this Part apply in relation to the disclosure of information on or after the commencement of this item, whether the information was obtained before, on or after that commencement.

## **Part 4—Secrecy and access**

### ***Anti-Money Laundering and Counter-Terrorism Financing Act 2006***

#### **38 Section 5**

Repeal the following definitions:

- (a) definition of *ASD Minister*;
- (b) definition of *ASD official*;
- (c) definition of *ASIO Minister*;
- (d) definition of *ASIO official*;
- (e) definition of *ASIS Minister*;
- (f) definition of *ASIS official*.

#### **39 Section 5**

Insert:

*AUSTRAC entrusted person* means:

- (a) the AUSTRAC CEO; or
- (b) a member of the staff of AUSTRAC; or
- (c) a person engaged as a consultant under subsection 225(1); or
- (d) a person whose services are made available to the AUSTRAC CEO under subsection 225(3); or
- (e) a member of a task force established by the AUSTRAC CEO under paragraph 212(1)(db); or
- (f) the Director of AUSTRAC; or
- (g) a person engaged as a consultant under repealed section 40A of the *Financial Transaction Reports Act 1988*.

Note: The former office of Director of AUSTRAC was established under the *Financial Transaction Reports Act 1988*.

#### **40 Section 5 (definition of *AUSTRAC information*)**

Repeal the definition, substitute:

*AUSTRAC information* means the following:

- (a) information obtained by, or generated by, an AUSTRAC entrusted person under or for the purposes of this Act;
- (b) information obtained by an AUSTRAC entrusted person under or for the purposes of any other law of the Commonwealth or a law of a State or a Territory;
- (c) information obtained by an AUSTRAC entrusted person from a government body;
- (d) FTR information (within the meaning of the *Financial Transaction Reports Act 1988*).

#### 41 Section 5

Insert:

***Commonwealth, State or Territory agency*** means any of the following:

- (a) an agency, authority, body or organisation of the Commonwealth, a State or a Territory that has functions in relation to, or that is responsible for or deals with, law enforcement or investigation of corruption;
- (b) an agency, authority, body or organisation of the Commonwealth, a State or a Territory that has functions in relation to, or that is responsible for or deals with, criminal intelligence, security intelligence, foreign intelligence or financial intelligence;
- (c) an agency, authority, body or organisation of the Commonwealth, a State or a Territory that has functions in relation to the protection of the public revenue of the Commonwealth, a State or a Territory;
- (d) an agency, authority, body or organisation of the Commonwealth, a State or a Territory that has regulatory functions;
- (e) an agency, authority, body or organisation of the Commonwealth, a State or a Territory that has oversight functions under a law of the Commonwealth, a State or a Territory;
- (f) a Department of the Commonwealth;
- (g) a Commonwealth Royal Commission whose terms of reference include inquiry into whether unlawful conduct (however described) has, or might have, occurred;

- (h) a State/Territory Royal Commission:
  - (i) whose terms of reference include inquiry into whether unlawful conduct (however described) has, or might have, occurred; and
  - (ii) that is specified in the AML/CTF Rules;
- (i) any other agency, authority, body or organisation of the Commonwealth, a State or a Territory, being an agency, authority, body or organisation prescribed by the AML/CTF Rules;
- (j) a task force that:
  - (i) is established by a Minister of the Commonwealth or of a State or Territory or established under a law of the Commonwealth, a State or a Territory; and
  - (ii) has functions of a kind described in paragraph (a), (b), (c) or (d);
- (k) a person who holds an office or appointment under a law of the Commonwealth, a State or a Territory, being an office or appointment prescribed by the AML/CTF Rules.

#### **42 Section 5**

Repeal the following definitions:

- (a) definition of *defence intelligence agency*;
- (b) definition of *designated agency*;
- (c) definition of *Director-General of Security*;
- (d) definition of *eligible collected information*.

#### **43 Section 5**

Insert:

*entrusted investigating official* means:

- (a) the Commissioner of the Australian Federal Police; or
- (b) the Chief Executive Officer of the Australian Crime Commission; or
- (c) the Commissioner of Taxation; or
- (d) the Comptroller-General of Customs; or
- (e) the Integrity Commissioner; or
- (f) an investigating officer.

**foreign agency** means:

- (a) a government body that has responsibility for:
  - (i) intelligence gathering for a foreign country; or
  - (ii) the security of a foreign country; or
- (b) a government body that has responsibility for law enforcement or investigation of corruption in a foreign country or a part of a foreign country; or
- (c) a government body that has responsibility for the protection of the public revenue of a foreign country; or
- (d) a government body that has regulatory functions in a foreign country; or
- (e) the European Police Office (Europol); or
- (f) the International Criminal Police Organization (Interpol); or
- (g) an international body prescribed by the regulations for the purposes of this paragraph.

#### 44 Section 5

Repeal the following definitions:

- (a) definition of **foreign intelligence agency**;
- (b) definition of **foreign law enforcement agency**;
- (c) definition of **Human Services Department**;
- (d) definition of **Human Services Minister**;
- (e) definition of **IGIS**;
- (f) definition of **IGIS official**;
- (g) definition of **Immigration Department**.

#### 45 Section 5

Insert:

**Integrity Commissioner** means the person appointed under section 175 of the *Law Enforcement Integrity Commissioner Act 2006* as the Integrity Commissioner.

#### 46 Section 5

Repeal the following definitions:

- (a) definition of **Inter-Governmental Committee**;
- (b) definition of **non-designated Commonwealth agency**.

**47 Section 5 (definition of *official*)**

Repeal the definition, substitute:

*official* has the meaning given by section 22.

**48 Section 5 (definition of *Treasury Department*)**

Repeal the definition.

**49 Section 22**

Repeal the section, substitute:

**22 Officials of Commonwealth, State or Territory agencies**

(1) For the purposes of this Act, an *official* of a Commonwealth, State or Territory agency covered by paragraph (a), (b), (c), (d), (e), (f), (g), (h), (i) or (j) of the definition of *Commonwealth, State or Territory agency* in section 5 is:

- (a) the head (however described) of the Commonwealth, State or Territory agency; or
- (b) a member or acting member of the Commonwealth, State or Territory agency; or
- (c) a member of the staff of the Commonwealth, State or Territory agency; or
- (d) an officer or employee of the Commonwealth, State or Territory agency; or
- (e) an officer, employee or other individual under the direction of the head (however described) of the Commonwealth, State or Territory agency; or
- (f) an individual who, under the AML/CTF Rules, is taken to be an official of the Commonwealth, State or Territory agency for the purposes of this Act;

and, in the case of a Commonwealth Royal Commission or a State/Territory Royal Commission, includes the following:

- (g) a legal practitioner (however described) appointed to assist the Commission;
- (h) a person authorised under subsection (3).

- (2) For the purposes of this Act, an **official** of a Commonwealth, State or Territory agency covered by paragraph (k) of the definition of **Commonwealth, State or Territory agency** in section 5 is:
- (a) the person who holds the office or appointment; or
  - (b) an individual who, under the AML/CTF Rules, is taken to be an official in relation to the Commonwealth, State or Territory agency for the purposes of this Act.

*Royal Commissions*

- (3) Either:
- (a) the sole Commissioner of a Commonwealth Royal Commission or a State/Territory Royal Commission; or
  - (b) a member of a Commonwealth Royal Commission or a State/Territory Royal Commission;
- may, in writing, authorise a person assisting the Commission for the purposes of paragraph (1)(h).

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

- (4) An authorisation under subsection (3) is not a legislative instrument.

## 50 After section 50

Insert:

### 50A Secrecy—information obtained under section 49

- (1) A person commits an offence if:
- (a) the person is, or has been, an entrusted investigating official; and
  - (b) the person has obtained information under section 49 or this section; and
  - (c) the person makes a record of, discloses or otherwise uses the information.

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

*Exception*

- (2) Subsection (1) does not apply if:
- (a) 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 entrusted investigating official; or
  - (b) the disclosure is to an AUSTRAC entrusted person or to another entrusted investigating official for the purposes of, or in connection with, the performance or exercise of the AUSTRAC entrusted person's or other official's functions, duties or powers.

Note: A defendant bears an evidential burden in relation to a matter in subsection (2) (see subsection 13.3(3) of the *Criminal Code*).

*Courts or tribunals*

- (3) Except where it is necessary to do so for the purposes of giving effect to this Act or the *Financial Transaction Reports Act 1988*, a person who is, or has been, an entrusted investigating official is not to be required:
- (a) to produce a document containing information obtained by the person under section 49 or this section to a court or tribunal; or
  - (b) to disclose information obtained by the person under section 49 or this section to a court or tribunal.

**51 Divisions 1 and 2 of Part 11**

Repeal the Divisions, substitute:

**Division 1—Introduction**

**120 Simplified outline of this Part**

- Except as permitted by this Act, an AUSTRAC entrusted person must not access, make a record of, authorise access to, disclose or otherwise use AUSTRAC information.
- A reporting entity must not disclose:

- (a) that the reporting entity has given, or is required to give, a report under subsection 41(2); or
  - (b) any information from which it could reasonably be inferred that the reporting entity has given, or is required to give, that report.
- 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.
  - In certain circumstances, AUSTRAC information may be disclosed to governments of foreign countries or to foreign agencies.
  - There are restrictions on persons using or disclosing AUSTRAC information where the information was disclosed to the persons in contravention of this Part.

## Division 2—AUSTRAC entrusted persons

### 121 Offence—AUSTRAC entrusted persons

- (1) A person commits an offence if:
- (a) the person is, or has been, an AUSTRAC entrusted person; and
  - (b) the person accesses, makes a record of, authorises access to, discloses or otherwise uses information; and
  - (c) the information is AUSTRAC information.

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

#### *Exceptions*

- (2) Subsection (1) does not apply if the access, making of the record, authorisation of the access, disclosure or use:
- (a) is for the purposes of this Act or the *Financial Transaction Reports Act 1988*; or

- (b) is for the purposes of the performance of the functions of the AUSTRAC CEO; or
- (c) is for the purposes of, or in connection with, the performance or exercise of the person's functions, duties or powers in relation to AUSTRAC; or
- (d) is in accordance with a provision of this Part; or
- (e) is for the purposes of the *Law Enforcement Integrity Commissioner Act 2006*.

Note: A defendant bears an evidential burden in relation to a matter in subsection (2) (see subsection 13.3(3) of the *Criminal Code*).

- (3) Subsection (1) does not apply if the disclosure is:
- (a) to an official of a Commonwealth, State or Territory agency for the purposes of, or in connection with, the performance or exercise of the official's functions, duties or powers in relation to the agency; or
  - (b) to a Minister of the Commonwealth or of a State or Territory for the purposes of, or in connection with, the performance of that Minister's responsibilities.

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

#### *Conditions*

- (4) If:
- (a) a person who is an AUSTRAC entrusted person discloses AUSTRAC information to another person under this section; and
  - (b) the other person is none of the following:
    - (i) an AUSTRAC entrusted person;
    - (ii) an official of a Commonwealth, State or Territory agency;
    - (iii) a Minister of the Commonwealth or of a State or Territory;

the AUSTRAC CEO may, in writing and at the time of the disclosure, impose conditions to be complied with in relation to the making of a record, disclosure or use of the information by the other person.

*Secondary dealings*

- (5) A person commits an offence if:
- (a) the person is none of the following:
    - (i) an AUSTRAC entrusted person;
    - (ii) an official of a Commonwealth, State or Territory agency;
    - (iii) a Minister of the Commonwealth or of a State or Territory; and
  - (b) AUSTRAC information is disclosed to the person under subsection (2); and
  - (c) the person is not subject to conditions under subsection (4) in relation to the information; and
  - (d) the person discloses the information to another person.

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

- (6) A person commits an offence if:
- (a) the person is none of the following:
    - (i) an AUSTRAC entrusted person;
    - (ii) an official of a Commonwealth, State or Territory agency;
    - (iii) a Minister of the Commonwealth or of a State or Territory; and
  - (b) AUSTRAC information is disclosed to the person under subsection (2); and
  - (c) the person is subject to conditions under subsection (4) in relation to the information; and
  - (d) the person makes a record of, discloses or otherwise uses the information; and
  - (e) the making of the record, disclosure or use referred to in paragraph (d) breaches any of those conditions.

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

*Instrument not a legislative instrument*

- (7) An instrument under subsection (4) is not a legislative instrument.

**52 Division 3 of Part 11 (heading)**

Repeal the heading, substitute:

**Division 3—Protection of information given under Part 3**

**53 Paragraph 124(2)(a)**

Omit “section 123, 136 or 137”, substitute “section 121, 123, 126, 128, 129, 136, 137, 161, 162 or 165 of this Act”.

**54 Paragraph 124(2)(b)**

Repeal the paragraph, substitute:

- (b) criminal proceedings for an offence against section 29 or 30 of the *Financial Transaction Reports Act 1988*;
- (c) proceedings under section 175 of this Act.

**55 Division 4 of Part 11**

Repeal the Division, substitute:

**Division 4—Access to AUSTRAC information by  
Commonwealth, State or Territory agencies**

**125 Access to AUSTRAC information**

- (1) The AUSTRAC CEO may, in writing, authorise specified officials of a specified Commonwealth, State or Territory agency to access specified AUSTRAC information for the purposes of performing the agency’s functions and duties and exercising the agency’s powers.

Note 1: For specification by class, see subsection 33(3AB) of the *Acts Interpretation Act 1901*.

Note 2: For variation and revocation, see subsection 33(3) of the *Acts Interpretation Act 1901*.

- (2) However, the AUSTRAC CEO may give an authorisation under subsection (1) in relation to an agency, authority, body or organisation of a State or Territory only if its head (however described) has given a written undertaking to the AUSTRAC CEO that it and its officials will comply with the Australian Privacy

Principles in respect of AUSTRAC information obtained under subsection 121(2) or (3), this section or subsection 126(2).

*Authorisation not a legislative instrument*

- (3) An authorisation under subsection (1) is not a legislative instrument.

## 126 Dealings with AUSTRAC information

- (1) A person commits an offence if:
- (a) the person is, or has been, an official of a Commonwealth, State or Territory agency; and
  - (b) the person has obtained AUSTRAC information under subsection 121(2) or (3), section 125 or subsection (2) of this section; and
  - (c) the person makes a record of, discloses or otherwise uses the information.

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

*Exception—functions, duties or powers of officials etc.*

- (2) Subsection (1) does not apply if:
- (a) 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; or
  - (b) the disclosure is to another official of a Commonwealth, State or Territory agency for the purposes of, or in connection with, the performance or exercise of the other official's functions, duties or powers in relation to the agency; or
  - (c) the disclosure is to a Minister of the Commonwealth or of a State or Territory for the purposes of, or in connection with, the performance of that Minister's responsibilities; or
  - (d) the disclosure is in accordance with section 127.

Note: A defendant bears an evidential burden in relation to a matter in subsection (2) (see subsection 13.3(3) of the *Criminal Code*).

*Exception—court or tribunal proceedings etc.*

- (3) Subsection (1) does not apply if the disclosure is to a person for the purposes of or in connection with:
- (a) court or tribunal proceedings; or
  - (b) proposed or possible court or tribunal proceedings; or
  - (c) obtaining legal advice.

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

*Secondary disclosure*

- (4) A person commits an offence if:
- (a) AUSTRAC information is disclosed to the person under subsection (3); and
  - (b) the person discloses the information to another person.

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

- (5) Subsection (4) does not apply if:
- (a) the disclosure is for the purposes of or in connection with:
    - (i) the court or tribunal proceedings; or
    - (ii) the proposed or possible court or tribunal proceedings; or
  - or
  - (iii) obtaining or giving the legal advice; or
  - (b) the disclosure is permitted by this Division.

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

## **Division 5—Disclosure of AUSTRAC information to foreign countries or agencies**

### **127 Disclosure of AUSTRAC information to foreign countries or agencies**

#### *AUSTRAC CEO*

- (1) The AUSTRAC CEO may disclose AUSTRAC information to the government of a foreign country, or to a foreign agency, if the AUSTRAC CEO is satisfied that:
  - (a) where the AUSTRAC CEO considers it appropriate, the government of the foreign country, or the foreign agency, has given an undertaking for:
    - (i) protecting the confidentiality of the information; and
    - (ii) controlling the use that will be made of the information; and
    - (iii) ensuring that the information will be used only for the purpose for which it is disclosed to the government of the foreign country or to the foreign agency; and
  - (b) it is appropriate, in all the circumstances of the case, to do so.

#### *Commonwealth, State or Territory agencies*

- (2) A person who is:
  - (a) the head (however described) of a Commonwealth, State or Territory agency referred to in subsection (3); or
  - (b) covered by an authorisation under subsection (4);may disclose AUSTRAC information to the government of a foreign country, or to a foreign agency, if the person is satisfied that:
  - (c) the government of the foreign country, or the foreign agency, has given an undertaking for:
    - (i) protecting the confidentiality of the information; and
    - (ii) controlling the use that will be made of the information; and

- (iii) ensuring that the information will be used only for the purpose for which it is disclosed to the government of the foreign country or to the foreign agency; and
- (d) it is appropriate, in all the circumstances of the case, to do so.

*List of agencies, authorities, bodies or organisations of the Commonwealth*

- (3) For the purposes of this section, the Commonwealth, State or Territory agencies are the following:
  - (a) the Department;
  - (b) the Attorney-General's Department;
  - (c) the Department of Foreign Affairs and Trade;
  - (d) the Australian Federal Police;
  - (e) the Australian Crime Commission;
  - (f) the Australian Prudential Regulation Authority;
  - (g) the Australian Securities and Investments Commission;
  - (h) the Australian Taxation Office;
  - (i) ASIO;
  - (j) ASIS;
  - (k) ASD;
  - (l) AGO;
  - (m) DIO;
  - (n) ONI;
  - (o) any other agency, authority, body or organisation of the Commonwealth that is prescribed by the AML/CTF Rules.

Note: See also the definition of *agency* in section 5.

*Authorisations*

- (4) For the purposes of paragraph (2)(b), the head (however described) of a Commonwealth, State or Territory agency referred to in subsection (3) may, in writing, authorise an official of the Commonwealth, State or Territory agency.

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

- (5) An authorisation under subsection (4) is not a legislative instrument.

## **Division 6—Unauthorised accessing of or use or disclosure of AUSTRAC information**

### **128 Unauthorised accessing of AUSTRAC information**

A person commits an offence if:

- (a) the person accesses information; and
- (b) the information is AUSTRAC information; and
- (c) the access is not permitted by this Part.

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

### **129 Use or disclosure of AUSTRAC information disclosed in contravention of this Part**

(1) A person commits an offence if:

- (a) information is disclosed to the person; and
- (b) the information is AUSTRAC information; and
- (c) the disclosure to the person is in contravention of this Part; and
- (d) the person makes a record of, discloses or otherwise uses the information.

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

#### *Exception*

(2) Subsection (1) does not apply if the person discloses the information for the purposes of an appropriate authority investigating the disclosure mentioned in paragraph (1)(c).

Note: A defendant bears an evidential burden in relation to a matter in subsection (2) (see subsection 13.3(3) of the *Criminal Code*).

## **56 Division 5 of Part 11 (heading)**

Repeal the heading, substitute:

## **Division 7—Use of AUSTRAC information in court or tribunal proceedings**

### **57 Section 134**

Repeal the section, substitute:

### **134 Use of AUSTRAC information in court or tribunal proceedings**

Except where it is necessary to do so for the purposes of giving effect to this Act or the *Financial Transaction Reports Act 1988*, a person is not to be required:

- (a) to produce a document containing AUSTRAC information to a court or tribunal; or
- (b) to disclose AUSTRAC information to a court or tribunal.

### **58 Subsection 190(4)**

Omit “section 126”, substitute “section 125”.

### **59 Section 208**

Omit “eligible collected information”, substitute “AUSTRAC information”.

### **60 Paragraph 212(1)(a)**

Omit “eligible collected information or”.

### **61 Paragraph 212(1)(b)**

Omit “entitled or”.

### **62 After paragraph 212(1)(da)**

Insert:

- (db) to establish such task forces as the AUSTRAC CEO considers appropriate; and

### **63 After paragraph 212(1)(e)**

Insert:

- (ea) to assist in the development of government policy or to assist academic research; and

## ***Inspector-General of Intelligence and Security Act 1986***

### **64 Section 25A (note)**

Omit “section 128”, substitute “Part 11”.

### **65 Application and transitional provisions**

- (1) Section 50A of the *Anti-Money Laundering and Counter-Terrorism Financing Act 2006*, as inserted by this Part, applies in relation to the making of a record of, the disclosure of or the use of information on or after the commencement of this item (whether the information was obtained before, on or after that commencement).
- (2) For the purposes of the operation of section 50A of the *Anti-Money Laundering and Counter-Terrorism Financing Act 2006*, as inserted by this Part, on or after the commencement of this item, information obtained under subsection 122(3) of that Act before that commencement is taken on and after that commencement to be information obtained under section 50A of that Act.
- (3) Section 121 of the *Anti-Money Laundering and Counter-Terrorism Financing Act 2006*, as substituted by this Part, applies in relation to the accessing of, the making of a record of, the authorising of access to, the disclosure of or the use of information on or after the commencement of this item (whether the information came into existence before, on or after that commencement).
- (4) The amendments of section 124 of the *Anti-Money Laundering and Counter-Terrorism Financing Act 2006* made by this Part apply in relation to proceedings instituted on or after the commencement of this item.
- (5) If:
  - (a) immediately before the commencement of this item, an authorisation is in force under subsection 126(1) of the *Anti-Money Laundering and Counter-Terrorism Financing Act 2006* in relation to a designated agency; and
  - (b) on the commencement of this item, the agency is a Commonwealth, State or Territory agency (within the meaning of section 5 of that Act);

then the authorisation has effect on and after the commencement of this item as if it were an authorisation in force under subsection 125(1) of that Act in relation to that Commonwealth, State or Territory agency.

- (6) Subitem (5) does not prevent the variation or revocation of the authorisation on or after the commencement of this item.
  - (7) Section 126 of the *Anti-Money Laundering and Counter-Terrorism Financing Act 2006*, as substituted by this Part, applies in relation to the making of a record of, the disclosure of or the use of information on or after the commencement of this item (whether the information came into existence before, on or after that commencement).
  - (8) For the purposes of the operation of section 126 of the *Anti-Money Laundering and Counter-Terrorism Financing Act 2006*, as substituted by this Part, on or after the commencement of this item, accessed information (within the meaning of subsection 127(4) of that Act as in force immediately before that commencement) obtained by a person before that commencement is taken on and after that commencement to be AUSTRAC information obtained under subsection 126(2) of that Act.
  - (9) If, at any time before the commencement of this item, a person was covered by subsection 127(1) of the *Anti-Money Laundering and Counter-Terrorism Financing Act 2006*, then, for the purposes of the operation of section 126 of that Act, as substituted by this Part, on or after that commencement, the person is taken to be a person who is or has been an official of a Commonwealth, State or Territory agency.
  - (10) Section 127 of the *Anti-Money Laundering and Counter-Terrorism Financing Act 2006*, as substituted by this Part, applies in relation to AUSTRAC information that came into existence before, on or after the commencement of this item.
  - (11) Section 128 of the *Anti-Money Laundering and Counter-Terrorism Financing Act 2006*, as substituted by this Part, applies in relation to the accessing of information on or after the commencement of this item.
  - (12) Paragraph 129(1)(a) of the *Anti-Money Laundering and Counter-Terrorism Financing Act 2006*, as substituted by this Part, applies in relation to a disclosure of information on or after the commencement of this item.
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## 66 Saving provisions

- (1) Sections 121, 122 and 127 of the *Anti-Money Laundering and Counter-Terrorism Financing Act 2006*, as in force immediately before the commencement of this item, continue to apply on and after that commencement in relation to a disclosure of information before that commencement.
- (2) Subsections 128(5) to (7) of the *Anti-Money Laundering and Counter-Terrorism Financing Act 2006*, as in force immediately before the commencement of this item, continue to apply on and after that commencement in relation to a disclosure of information before that commencement under paragraph 128(3)(a) of that Act.
- (3) Subsections 128(10) to (12) of the *Anti-Money Laundering and Counter-Terrorism Financing Act 2006*, as in force immediately before the commencement of this item, continue to apply on and after that commencement in relation to a disclosure of information before that commencement under subsection 128(8) of that Act.
- (4) Section 130 of the *Anti-Money Laundering and Counter-Terrorism Financing Act 2006*, as in force immediately before the commencement of this item, continues to apply on and after that commencement in relation to information obtained under subsection 129(1) or 131(2) of that Act before that commencement.
- (5) Subsections 131(4) to (6) of the *Anti-Money Laundering and Counter-Terrorism Financing Act 2006*, as in force immediately before the commencement of this item, continue to apply on and after that commencement in relation to a disclosure of information before that commencement under subsection 131(3) of that Act.

## Part 5—Reports about cross-border movements of monetary instruments

### *Anti-Money Laundering and Counter-Terrorism Financing Act 2006*

#### 67 Section 4

Omit “physical currency”, substitute “monetary instruments”.

#### 68 Section 4

Omit:

- Cross-border movements of bearer negotiable instruments must be reported to the AUSTRAC CEO, a customs officer or a police officer if a customs officer or a police officer requires a person to make such a report.

#### 69 Section 5

Insert:

***monetary instrument*** means any of the following:

- (a) physical currency;
- (b) a bearer negotiable instrument;
- (c) a thing prescribed by the AML/CTF Rules.

***monetary instrument amount*** for a monetary instrument means:

- (a) for physical currency—the amount of the currency; or
- (b) for a bearer negotiable instrument—the amount payable under the instrument; or
- (c) for a thing prescribed by the AML/CTF Rules for the purposes of paragraph (c) of the definition of ***monetary instrument*** in this section—the amount worked out in accordance with the AML/CTF Rules.

***move:***

- (a) *move* a monetary instrument into Australia has the meaning given by section 55; and
- (b) *move* a monetary instrument out of Australia has the meaning given by section 56.

#### 70 Section 5

Repeal the following definitions:

- (a) definition of *move physical currency into Australia*;
- (b) definition of *move physical currency out of Australia*.

#### 71 Section 5

Insert:

*non-reportable cross-border movement of monetary instruments*  
means:

- (a) a movement of one or more monetary instruments into Australia; or
- (b) a movement of one or more monetary instruments out of Australia;

for which a report under section 53 is not required.

#### 72 Section 5 (definition of *non-reportable cross-border movement of physical currency*)

Repeal the definition.

#### 73 Section 5 (definition of *send*)

Omit “physical currency”, substitute “a monetary instrument”.

#### 74 Part 4 (heading)

Repeal the heading, substitute:

### **Part 4—Reports about cross-border movements of monetary instruments**

#### 75 Divisions 1 to 3 of Part 4

Repeal the Divisions, substitute:

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## **Division 1—Simplified outline of this Part**

### **52 Simplified outline of this Part**

- Cross-border movements of monetary instruments must be reported to the AUSTRAC CEO, a customs officer or a police officer if the total value moved is \$10,000 or more.

## **Division 2—Reports about monetary instruments**

### **53 Reports about movements of monetary instruments into or out of Australia**

#### *Offence*

- (1) A person commits an offence if:
  - (a) either:
    - (i) the person moves one or more monetary instruments into Australia; or
    - (ii) the person moves one or more monetary instruments out of Australia; and
  - (b) the sum of the monetary instrument amounts is \$10,000 or more; and
  - (c) a report in respect of the movement is not given in accordance with this section.

Penalty: Imprisonment for 2 years or 500 penalty units, or both.

#### *Civil penalty*

- (2) A person must not:
  - (a) move one or more monetary instruments into Australia; or
  - (b) move one or more monetary instruments out of Australia;if:
  - (c) the sum of the monetary instrument amounts is \$10,000 or more; and
  - (d) a report in respect of the movement is not given in accordance with this section.

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

*Commercial carriers*

- (4) Subsections (1) and (2) do not apply to a person if:
- (a) the person is a commercial passenger carrier; and
  - (b) the monetary instruments are in the possession of any of the carrier's passengers.
- (5) Subsections (1) and (2) do not apply to a person if:
- (a) the person is a commercial goods carrier; and
  - (b) the monetary instruments are carried on behalf of another person.
- (6) A person who wishes to rely on subsection (4) or (5) bears an evidential burden in relation to that matter.

*Requirements for reports under this section*

- (7) A report under this section must:
- (a) be in the approved form; and
  - (b) contain the information specified in the AML/CTF Rules; and
  - (c) be given to the AUSTRAC CEO, a customs officer or a police officer; and
  - (d) comply with the applicable timing rule in the AML/CTF Rules.

Note 1: For additional rules about reports, see section 244.

Note 2: Division 8 of Part 15 sets out special enforcement powers relating to this section.

Note 3: See also section 18 (translation of foreign currency to Australian currency).

## **54 Reports about receipts of monetary instruments moved into Australia**

*Offence*

- (1) A person commits an offence if:
-

- (a) the person receives one or more monetary instruments moved into Australia to the person; and
- (b) at the time of the receipt, the sum of the monetary instrument amounts is \$10,000 or more; and
- (c) a report in respect of the receipt is not given in accordance with this section.

Penalty: Imprisonment for 2 years or 500 penalty units, or both.

*Civil penalty*

- (2) A person must not receive one or more monetary instruments moved into Australia to the person if:
  - (a) at the time of the receipt, the sum of the monetary instrument amounts is \$10,000 or more; and
  - (b) a report in respect of the receipt is not given in accordance with this section.
- (3) Subsection (2) is a civil penalty provision.

*Requirements for reports under this section*

- (4) A report under this section must:
  - (a) be in the approved form; and
  - (b) contain the information specified in the AML/CTF Rules; and
  - (c) be given to the AUSTRAC CEO, a customs officer or a police officer; and
  - (d) be given before the end of 5 business days beginning on the day of the receipt.

Note 1: For additional rules about reports, see section 244.

Note 2: See also section 18 (translation of foreign currency to Australian currency).

## **55 Movements of monetary instruments into Australia**

For the purposes of this Act, a person *moves* a monetary instrument into Australia if the person brings or sends the instrument into Australia.

## **56 Movements of monetary instruments out of Australia**

- (1) For the purposes of this Act, a person *moves* a monetary instrument out of Australia if the person takes or sends the instrument out of Australia.
- (2) For the purposes of this Act, if:
  - (a) a person arranges to leave Australia on an aircraft or ship; and
  - (b) either:
    - (i) the person has a monetary instrument in the person's baggage, and the person enters a place at which customs officers examine passports; or
    - (ii) the person takes a monetary instrument into a place at which customs officers examine passports;the person is taken to have *moved* the instrument out of Australia when the person leaves that place.

## **57 Obligations of customs officers and police officers**

If a customs officer or police officer receives a report under section 53 or 54, the officer must forward it to the AUSTRAC CEO before the end of 5 business days beginning on the day of the receipt.

## **76 Section 143 (heading)**

Repeal the heading, substitute:

## **143 Conducting transfers to avoid reporting requirements relating to cross-border movements of monetary instruments**

### **77 Paragraph 143(1)(a)**

Repeal the paragraph, substitute:

- (a) 2 or more non-reportable cross-border movements of monetary instruments are conducted, where each movement was either conducted, or was caused to be conducted, by the first person; and

**78 Paragraph 143(1)(b)**

Omit “physical currency”, substitute “monetary instruments”.

**79 Subsection 143(2)**

Omit “defendant”, substitute “first person”.

**80 Subsection 143(2)**

Omit “physical currency”, substitute “monetary instruments”.

**81 Paragraphs 143(3)(a) and (b)**

Repeal the paragraphs, substitute:

- (a) for each movement of the one or more monetary instruments—the sum of the monetary instrument amounts;
- (b) the total of the amounts applicable under paragraph (a) for the movements;

**82 Section 173**

Omit “physical currency and bearer negotiable instruments”, substitute “monetary instruments”.

**83 Section 173**

Omit “physical currency or bearer negotiable instruments”, substitute “monetary instruments”.

**84 Paragraphs 184(1A)(a) and (b)**

Repeal the paragraphs, substitute:

- (a) subsection 53(2) (which deals with reports about movements of monetary instruments);

**85 At the end of subsection 185(1)**

Add:

Note: See sections 186A and 186B for the penalty to be specified in the infringement notice.

**86 Section 186**

Repeal the section.

**87 Section 186A (heading)**

Repeal the heading, substitute:

**186A Amount of penalty—breaches of certain provisions of Part 3A, 4, 6 or 6A**

**88 Subsection 186A(1)**

Omit “subsection 74(1), (1A), (1B), or (1C) or 75M(1) (a *Part 6 infringement notice provision*), subsection 76A(1) or (2) or 76P(1) (a *Part 6A infringement notice provision*) or subsection 51B(1) or 51F(1) (a *Part 3A infringement notice provision*)”, substitute “subsection 51B(1), 51F(1), 53(2), 74(1), (1A), (1B) or (1C), 75M(1), 76A(1) or (2) or 76P(1)”.

**89 Subsection 186A(2)**

Omit “a Part 6 infringement notice provision, a Part 6A infringement notice provision or a Part 3A infringement notice provision”, substitute “subsection 51B(1), 51F(1), 53(2), 74(1), (1A), (1B) or (1C), 75M(1), 76A(1) or (2) or 76P(1)”.

**90 Paragraph 186A(3)(a)**

Repeal the paragraph, substitute:

- (a) specify one or more kinds of alleged contraventions; and

**91 Paragraph 186A(3)(b)**

Omit “set out in the AML/CTF Rules”.

**92 Paragraphs 186A(4)(a) and (b)**

Repeal the paragraphs, substitute:

- (a) whether an alleged contravention is one of a number of alleged contraventions of a provision covered by subsection (1) or (2) that is specified in a particular infringement notice;
- (b) whether a person alleged to have contravened one or more provisions covered by subsection (1) or (2) has previously been given an infringement notice in relation to an alleged contravention of one or more of those provisions.

**93 Subparagraphs 189(b)(i) and (c)(i)**

Omit “or 59(3)”.

**94 Division 8 of Part 15 (heading)**

Repeal the heading, substitute:

**Division 8—Powers of questioning, search and arrest for  
cross-border movements of monetary  
instruments**

**95 Section 199 (heading)**

Repeal the heading, substitute:

**199 Questioning and search powers in relation to monetary  
instruments**

**96 Paragraph 199(1)(c)**

Omit “Australian currency or foreign currency”, substitute “monetary instruments”.

**97 Paragraph 199(1)(d)**

Omit “total amount of any Australian currency or foreign currency”, substitute “sum of the monetary instrument amounts for the monetary instruments”.

**98 Paragraphs 199(1)(e) and (f)**

Omit “Australian currency or foreign currency”, substitute “monetary instruments”.

**99 Paragraph 199(2)(a)**

Omit “Australian currency or foreign currency”, substitute “monetary instruments”.

**100 Paragraph 199(2)(b)**

Omit “total amount of any Australian currency or foreign currency”, substitute “sum of the monetary instrument amounts for the monetary instruments”.

**101 Paragraphs 199(2)(c) and (d)**

Omit “Australian currency or foreign currency”, substitute “monetary instruments”.

**102 After subsection 199(2)**

Insert:

*Officer may copy bearer negotiable instruments*

(2AA) If a person produces to a police officer or a customs officer under paragraph (1)(f) or (2)(d):

- (a) a bearer negotiable instrument; or
- (b) a thing prescribed by the AML/CTF Rules for the purposes of paragraph (c) of the definition of *monetary instrument* in section 5 that is able to be copied;

the officer may make a copy of the instrument or thing. Once copied, the officer must return the instrument or thing to the person.

**103 Subsection 199(2A) (heading)**

Repeal the heading, substitute:

*Person leaving or arriving in Australia—seizing monetary instrument*

**104 Subsection 199(2A)**

Omit “seize physical currency”, substitute “seize a monetary instrument”.

**105 Paragraphs 199(2A)(a) and (b)**

Omit “physical currency”, substitute “monetary instrument”.

**106 Subparagraphs 199(3)(b)(i) and (ii)**

Omit “physical currency”, substitute “monetary instrument”.

**107 Subparagraphs 199(4)(d)(i) and (ii)**

Omit “physical currency”, substitute “a monetary instrument”.

**108 Subsection 199(5)**

Omit “seize physical currency”, substitute “seize a monetary instrument”.

**109 Paragraphs 199(5)(a) and (b)**

Omit “physical currency”, substitute “monetary instrument”.

**110 Paragraphs 199(8)(c) and (d) and (9)(c) and (d)**

Omit “physical currency”, substitute “monetary instrument”.

**111 Subsection 199(10)**

Omit “seize physical currency”, substitute “seize a monetary instrument”.

**112 Paragraphs 199(10)(a) and (b)**

Omit “physical currency”, substitute “monetary instrument”.

**113 Subsection 199(14) (heading)**

Repeal the heading, substitute:

*Monetary instrument of interest*

**114 Subsection 199(14)**

Omit “physical currency may be of interest if the physical currency”, substitute “a monetary instrument may be of interest if the monetary instrument”.

**115 Section 200**

Repeal the section.

**116 Subsection 201(1)**

Omit “or 59(3)”.

**117 Subsection 244(1)**

Omit “, 55 or 59”, substitute “or 54”.

**118 Subclause 1(4) of Schedule 1**

Repeal the subclause, substitute:

*Cross-border movements of bearer negotiable instruments*

- (4) Division 2 of Part 4 and section 199, so far as they relate to a monetary instrument that is a bearer negotiable instrument, also have the effect they would have if they were, by express provision, confined to a bearer negotiable instrument that is:
- (a) a bill of exchange; or
  - (b) a promissory note.

***Proceeds of Crime Act 2002***

**119 Subsection 29(3)**

Omit “59,”, substitute “former section 59 or section”.

**120 Section 338 (subparagraph (ea)(i) of the definition of *serious offence*)**

Omit “physical currency”, substitute “monetary instruments”.

**121 Section 338 (subparagraph (ea)(ii) of the definition of *serious offence*)**

Omit “section 59”, substitute “former section 59”.

***Surveillance Devices Act 2004***

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

Omit “59,”, substitute “former section 59 or section”.

**123 Application, saving and transitional provisions**

- (1) Division 2 of Part 4 of the *Anti-Money Laundering and Counter-Terrorism Financing Act 2006*, as substituted by this Part, applies in relation to the movement of a monetary instrument into or out of Australia on or after the commencement of this item.

- (2) Division 2 of Part 4 of the *Anti-Money Laundering and Counter-Terrorism Financing Act 2006*, as in force immediately before the commencement of this item, continues to apply on and after that commencement in relation to physical currency moved into or out of Australia before that commencement.
- (3) Division 3 of Part 4, and sections 201 and 244, of the *Anti-Money Laundering and Counter-Terrorism Financing Act 2006*, as in force immediately before the commencement of this item, continue to apply on and after that commencement in relation to a requirement made under subsection 59(1) of that Act before that commencement.
- (4) Section 143 of the *Anti-Money Laundering and Counter-Terrorism Financing Act 2006*, as in force immediately before the commencement of this item, continues to apply on and after that commencement in relation to non-reportable cross-border movements of physical currency that occurred before that commencement.
- (5) For the purposes of the operation of section 143 of the *Anti-Money Laundering and Counter-Terrorism Financing Act 2006* on or after the commencement of this item, a non-reportable cross-border movement of physical currency that occurred before the commencement of this item is taken on and after that commencement to have been a non-reportable cross-border movement of monetary instruments.
- (6) The amendments of section 186A of the *Anti-Money Laundering and Counter-Terrorism Financing Act 2006* made by this Part apply in relation to an alleged contravention of a provision covered by subsection 186A(1) or (2) of that Act occurring on or after the commencement of this item.
- (7) Division 3 of Part 15 of the *Anti-Money Laundering and Counter-Terrorism Financing Act 2006*, as in force immediately before the commencement of this item, continues to apply on and after that commencement in relation to an alleged contravention of subsection 53(3) or 59(4) of that Act occurring before that commencement.
- (8) The amendments of section 199 of the *Anti-Money Laundering and Counter-Terrorism Financing Act 2006* made by this Part apply in relation to a person who on or after the commencement of this item:

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- (a) is about to leave Australia or is in an embarkation area for the purpose of leaving Australia; or
  - (b) arrives in Australia.
  
- (9) Section 200 of the *Anti-Money Laundering and Counter-Terrorism Financing Act 2006*, as in force immediately before the commencement of this item, continues to apply on and after that commencement in relation to a person who before that commencement:
  - (a) was about to leave Australia or was in an embarkation area for the purpose of leaving Australia; or
  - (b) arrived in Australia.

## **Part 6—Money laundering offences in the Criminal Code**

### ***Criminal Code Act 1995***

#### **124 Subsection 400.2A(2) of the *Criminal Code***

Repeal the subsection, substitute:

- (2) Those sections apply if either or both of the following apply:
  - (a) a circumstance described in subsection (3) exists;
  - (b) a circumstance described in subsection (4) exists.

#### **125 After section 400.10 of the *Criminal Code***

Insert:

#### **400.10A Effect of money or property being provided as part of a controlled operation**

- (1) In a prosecution for an offence by a person against section 400.3, 400.4, 400.5, 400.6, 400.7 or 400.8 in relation to the person dealing with money or other property, it is not necessary to prove that the money or property is proceeds of crime if it is proved that, as part of a controlled operation in relation to suspected offences against this Division, either of the following provided the money or property:
  - (a) a law enforcement participant in the controlled operation;
  - (b) a civilian participant in the controlled operation, acting in accordance with the instructions of a law enforcement officer.
- (2) In this section:

***civilian participant*** in a controlled operation has the meaning given by Part IAB of the *Crimes Act 1914*.

***controlled operation*** has the meaning given by Part IAB of the *Crimes Act 1914*.

*law enforcement officer* has the meaning given by subsection 3(1) of the *Crimes Act 1914*.

*law enforcement participant* in a controlled operation has the meaning given by Part IAB of the *Crimes Act 1914*.

## 126 Application and transitional provisions

- (1) The repeal and substitution of subsection 400.2A(2) of the *Criminal Code* made by this Part does not, by implication, affect the interpretation of that subsection as in force before the commencement of this item.
- (2) Section 400.10A of the *Criminal Code*, as inserted by this Part, applies in relation to dealings with money or other property on or after the commencement of this item.

## **Part 7—Dishonestly representing conferral of police awards**

### ***Australian Federal Police Act 1979***

#### **127 After section 61**

Insert:

#### **62 Dishonestly representing conferral of police awards**

- (1) A person commits an offence if the person dishonestly represents that a police award has been conferred on the person.

Penalty: Imprisonment for 6 months.

##### *Police award*

- (2) For the purposes of this section, a ***police award*** is an award, commendation, citation, medal or other decoration (however described) that has been or may be conferred on the Commissioner or an AFP appointee for police services that are provided by the Commissioner or AFP appointee.

##### *Dishonesty*

- (3) For the purposes of this section, ***dishonest*** means:
- (a) dishonest according to the standards of ordinary people; and
  - (b) known by the defendant to be dishonest according to the standards of ordinary people.
- (4) In a prosecution for an offence against this section, the determination of dishonesty is a matter for the trier of fact.

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[*Minister's second reading speech made in—  
House of Representatives on 17 October 2019  
Senate on 12 November 2020*]

(202/19)

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