

AML/CTF ACT Law Society Seminar

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KEYPOINT LAW

AGENDA

- Introduction to the AML/CTF Regime for law firms
- Risk Assessment and Policy requirements
- AML/CTF in Legal Practice:
 - What is a designated service?
 - What are the exceptions?
 - Identifying ML/TF Risks in practice
 - Tipping off provisions
 - Terminating a retainer
 - Solicitor Conduct Rules

WHAT IS AML/CTF?

- Australia's *Anti-Money Laundering and Counter-Terrorism Financing Act 2006* (Cth) (the **Act**) has been amended to extend AML/CTF obligations to legal practitioners, accountants, conveyancers and other professionals— known as the **Tranche 2 reforms**.
- The regime is designed to deter, detect, and disrupt money laundering (ML), terrorism financing (TF), and proliferation financing (PF).
- Lawyers are seen as gate keepers to the financial system whose services can be exploited to legitimise the proceeds of crime — through property transactions, trust structures, company formations, and trust accounts.
- **AUSTRAC** (Australian Transaction Reports and Analysis Centre) is the regulator and Australia's financial intelligence unit.

IDENTIFYING ML/TF RISKS

- Under the Act, law firms are required to identify and assess the ML/TF risks it reasonably faces in providing designated services (s 29A of the Act; Part 5 of the AML/CTF Rules 2025).
- This is documented in a **ML/TF Risk Assessment** — a standalone document that sits alongside your AML/CTF Policy.
- As part of your risk assessment, you need to analyse:
 - **Services** – which of your practice areas involve ‘designated services’
 - **Clients** – what types of clients do you act for e.g. individuals, body corporates, trustees, not-for-profits
 - **Delivery channels** – how do you deliver legal services e.g. remotely, in-person or through other mediums
 - **Geography** – what countries are relevant to your services and where are your clients and counterparties located
 - **Emerging risks** – new technology, evolving criminal methodologies, cryptocurrencies.

EXAMPLE CONCLUSIONS FROM ML/TF RISK ASSESSMENT

Law firm concluded that overall risk was low:

- **Top-heavy structure** — services delivered by 80+ senior principals with 15-20+ years' PQE and unrestricted practising certificates
- **Known clients** — clients are ordinarily well-known to principals over many years; very rare for a client to come to us "cold"
- **Robust trust account controls** — CEO approval required for all trust movements; hard division between those who control trust and those with client relationships
- **Risk survey confirmed** — all CPs surveyed; no known politically exposed persons (**PEPs**), sanctioned persons, or high-risk jurisdiction matters identified
- **Domestic focus** — ~3% of revenue involves foreign parties; no dealings with FATF blacklisted countries
- **No cash or crypto** — firm does not accept cash payments or cryptocurrency
- **~50% non-designated** — approximately half of revenue is litigation (not a designated service); half of remaining matters don't use trust beyond fees/disbursements

AML/CTF POLICY

- You need to develop a policy on how your firm will identify and deal with ML/TF risks and comply.
- Your Policy and AML/CTF Program should identify:
 - Who will fill key AML/CTF roles;
 - How you will undertake due diligence on key personnel and ensure they have appropriate training;
 - How you will undertake customer due diligence (CDD) and ongoing CDD and triggers for review;
 - What happens if there is incomplete CDD?;
 - How you will report to AUSTRAC;
 - How you will manage and review your policy and procedures; and
 - Other things to attend to:
 - Update your costs agreement and retainers (disbursements, AML, termination of retainer);
 - Update privacy policy; and
 - Update onboarding procedures.

WHAT IS A DESIGNATED SERVICE?

Section 6 of the Act, Table 6 sets out a list of matters that constitute a ‘**designated service**’:

- Assisting in the planning or execution of a transaction to sell, buy or otherwise transfer real estate (**Item 1**);
- Assisting in the planning or execution of a transaction to sell, buy or transfer a body corporate or legal arrangement (**Item 2**);
- Receiving, holding, controlling or managing a person's property to help in the planning or execution of a transaction (**Item 3**);
- Assisting in organising, planning, or executing a transaction for equity or debt financing relating to a body corporate or legal arrangement (**Item 4**);
- Selling or transferring a shelf company (**Item 5**);
- Assisting in the planning or execution of the creation or restructuring of a body corporate or legal arrangement (**Item 6**);
- Acting, or arranging for someone to act, as a director, secretary, power of attorney of a non-natural person, trustee, partner or similar position in a body corporate or legal arrangement (**Item 7**);
- Acting, or arranging for someone to act, as a nominee shareholder of a body corporate or legal arrangement (**Item 8**);
- Providing a registered office address or principal place of business address of a body corporate or legal arrangement (**Item 9**).

WHAT ARE THE EXCEPTIONS?

- **Court/tribunal orders** — transactions pursuant to a court order are not designated services (Items 1 & 2)
- **Trust money for legal fees** — funds held for legal fees and disbursements (Item 3)
- **Trust money under court orders** — judgment sums, court-ordered settlements excluded (Item 3)
- **Payments to/from government, courts or insurers** — e.g. ATO payments, insurance payouts, bail (Item 3)
- **Testamentary trusts** — not "express trusts" under the Act, excluded from Items 2, 4–9
- **Powers of attorney for natural persons** — excluded from Item 7
- **Court-appointed fiduciary roles and bankruptcy trustees** — excluded from Item 7
- **Leases of 30 years or less, easements and covenants** — not "real estate" under Item 1
- Guidance suggests Item 2 only applies to controlling interests (but suggest caution) see AUSTRAC guidance: <https://www.austrac.gov.au/new-austrac/designated-services-newly-regulated-entities/professional-designated-services>

EXCEPTIONS THAT APPLY ACROSS BOARD

- **Same business group:** Service to another entity within your own corporate group is not a DS (s 6(6A)).
- **Barristers on instructions:** A barrister briefed by a solicitor is not themselves providing a DS — the obligation sits with the solicitor's firm (s 6(6B)).
- **Geographic link required:** The service must have a connection to Australia. Purely offshore matters with no Australian nexus are not caught (s 6(6)) but lawyer providing it through an Australian establishment is caught.
- **The "assisting" threshold:** Only caught if your work directly advances the transaction. General advice is not enough. e.g. "you should sell your business" = not caught; drafting the share sale agreement = caught.
- **Litigation is generally not caught:** Dispute resolution relates to past events, not transactions in progress. But if a matter settles without a court order and funds flow through trust = caught.
- **Duty lawyers and legal assistance:** Duty lawyers, court referrals, Legal Aid, CLCs are exempted.

If in doubt — ask: Escalate to the Compliance Officer rather than assume you are excluded.

Test your knowledge

Q1: You are acting in a commercial litigation matter. The matter settles by deed (no court order) and \$500,000 flows through your trust account.

A: YES — *Item 3 is triggered. Settlement funds through trust without a court order are caught.*

Q2: You draft a will that includes a testamentary trust.

A: NO — *Testamentary trusts are expressly excluded. Drafting a will is not caught.*

Q3: You act for a buyer in a property purchase.

A: YES — *Item 1. CDD required before commencing (or delayed CDD within 15 days of exchange).*

Q4: You hold \$20,000 on trust solely as an estimate of your legal fees.

A: NO — *Funds held for your own fees/disbursements are excluded under s 6(5C)(a).*

Q5: Your client receives a \$200,000 insurance payout into your trust account following a personal injury claim.

A: NO — *Receipts from a licensed insurer are excluded under s 6(5D).*

Q6: You provide general strategic advice about whether a client should restructure their business. You don't draft any documents or take steps to implement.

A: NO — *General advice that merely influences the client does not "directly advance" a transaction.*

Q7: You act as power of attorney for an elderly individual client.

A: NO — *Powers of attorney for natural persons are excluded from Item 7 (s 6(5E)).*

IDENTIFYING ML/TF RISKS IN PRACTICE

- Money launderers use lawyers for three things:
 - **Placement** - getting dirty money into the system;
 - **Layering** - moving it to obscure the trail; and
 - **Integration** - making it look legitimate.
- Trust accounts are the #1 vulnerability -- criminals use them to place and move funds.
- Property transactions are high risk -- AUSTRAC rates conveyancing as HIGH vulnerability.
- Complex structures obscure ownership -- trusts within trusts, shelf companies, nominee arrangements and layered entities make it hard to identify who really controls assets.
- High-value unfinanced transactions -- property purchases of \$1.5M+ with no institutional lender removes the scrutiny a bank would normally provide.
- Unusual instructions -- requests with no apparent economic or legal purpose, pressure for speed, willingness to pay inflated fees, or frequent changes in instructions.
- Third parties and intermediaries -- clients acting through representatives, or unknown third parties paying into trust, can obscure the true beneficial owner.
- Source of funds you can't explain -- you can't understand where the money came from.
- Overseas elements -- high-risk jurisdictions (FATF grey/black list), offshore companies, or funds from countries with strict capital controls.
- PEPs -- Politically Exposed Persons (especially foreign PEPs) are vulnerable to corruption and bribery and present inherently higher ML/TF risk

TIPPING OFF

The offence (s 123)

- It is a criminal offence to disclose information where doing so would or could reasonably be expected to prejudice an investigation
- Maximum penalty: 2 years imprisonment

What you CANNOT disclose (where it would prejudice an investigation)

- That an SMR has been submitted or that a requirement to submit one has been triggered
- Any report, document or draft prepared for SMR purposes (including internal notes recording a suspicion)
- That you have given or been required to give information to AUSTRAC under ss 49 or 49B
- That a client is being investigated by AUSTRAC or law enforcement

What you CAN do

- Request more information from a client -- if asked why, say "it's needed to meet our AML/CTF obligations"
- Dissuade a client from illegal activity (in good faith) -- explain how activities could break the law, but do NOT mention any SMR or investigation
- Report to AUSTRAC -- disclosing to AUSTRAC is always permitted

TERMINATING A RETAINER

When we may terminate

- Continuing to provide designated services would be inconsistent with our professional responsibilities and ethical obligations.
- Continuing would cause us to fail to meet our AML/CTF obligations (e.g., client on sanctions list, CDD cannot be completed).
- Senior Manager approval required before any termination.

What we tell the client

- We MAY say: "Continuing to act is inconsistent with our ethical duties or professional responsibilities"
- We MUST NOT say: anything about SMRs, AUSTRAC reports, investigations or notices (tipping off prohibition applies)
- The law may prohibit us from providing detailed reasons -- our retainer will include a clause acknowledging this

Our retainer/costs agreement will include

- That we are subject to statutory obligations, including reporting obligations, that might include confidential information
- That we may terminate where continuing would require us to breach our ethical duties
- That the law may prohibit us from providing reasons for termination

Process

- Refer to Compliance Officer and Senior Manager before terminating
- Record: reasons, information requests, client responses, wording used, and any controls applied

SOLICITOR CONDUCT RULES AND ETHICS

The tension

- AML requires reporting to AUSTRAC (potentially including confidential client information)
- Solicitor Conduct Rules require maintaining client confidentiality (Rule 9) and acting in client's best interests (Rule 4)
- These appear to conflict – Lawyer X.

How the law resolves it

- Rule 9 - A solicitor may disclose confidential information if COMPELLED BY LAW to do so
- The AML/CTF Act compels disclosure (SMRs, TTRs, CBMs) -- this overrides confidentiality
- Legal Professional Privilege is preserved (s 242 of Act) -- you can refuse to disclose privileged information, but confidentiality and LPP are different concepts.

Key distinctions

- Client confidentiality (Rule 9) -- overridden by the Act. You are compelled by law to report.
- Legal Professional Privilege (s 242) -- preserved. If ALL information is privileged, you can refuse to file. If only SOME is privileged, we file what we can and Compliance Officer submits an LPP Form in both instances.
- Duty to act in client's best interests (Rule 4) -- does not extend to assisting criminal activity. You can terminate.
- Duty not to deceive -- you must not actively mislead the client, but you are not required to volunteer the existence of an SMR.

Practical guidance

- You CAN report to AUSTRAC without breaching your ethical obligations -- the law requires it
- If uncertain whether something is privileged or confidential, escalate to Compliance Officer.

THE TRAP FOR SOLICITORS – LPP v AML

The core rule (s 242 of the Act)

- LPP is preserved -- nothing in the AML/CTF Act affects the right to refuse to disclose privileged information
- But confidentiality (Rule 9 ASCR) is NOT the same as privilege -- the Act overrides confidentiality, not LPP

What is NOT privileged (according to AUSTRAC) -- must be disclosed in an SMR

- Client identity, address, date of birth -- these are facts, not legal advice
- Transaction details -- amounts, dates, parties, property descriptions
- CDD documents -- passports, company extracts, trust deeds, ASIC searches
- Source of funds evidence -- bank statements, loan documents, transfer records
- Your observations of unusual client conduct or instructions -- what they asked you to do
- Beneficial ownership information -- who owns or controls entities
- Transaction documents -- contracts, transfers, settlement statements, trust account records

What IS privileged -- generally cannot be compelled

- Your legal advice to the client about their legal position
- Confidential communications made for the dominant purpose of giving or receiving legal advice
- Litigation communications made for the dominant purpose of existing or anticipated proceedings
- Work product created for the dominant purpose of providing legal advice

LPP does NOT apply to

- Communications made for an illegal or improper purpose (crime-fraud exception)
- If the client's purpose in seeking your advice is to further criminal activity, the communications were never privileged

LPP AND SUSPICIOUS MATTER REPORTS (SMR)

Scenario 1 -- ALL information making up your suspicion is privileged

- We can refuse to file the SMR entirely
- We do NOT need to submit an LPP Form
- This will be rare -- most suspicions are based on factual observations, not legal advice

Scenario 2 -- SOME information is privileged, some is not (most likely where LPP arises)

- We MUST file the SMR with the non-privileged information included
- We withhold the privileged portion and the Compliance Officer submits an LPP Form to AUSTRAC
- Timeframe: 5 business days (or 24 hours for terrorism financing)
- Describing the privileged information in the LPP Form does NOT waive privilege (s 242(2))

Scenario 3 -- NO information is privileged (most common scenario)

- We must file the full SMR within 3 business days (24 hours for terrorism financing)
- Confidentiality under Rule 9 is overridden -- we are compelled by law
- Most SMRs will fall into this category -- the grounds of suspicion are usually factual observations about identity, conduct, transactions and instructions

Key point for CPs

- Most of the time, your suspicion will be based on FACTS (what the client did, what they asked for, where the money came from) -- not on legal advice you gave them
- Facts are confidential but NOT privileged -- they must be disclosed
- If in doubt whether information is privileged, escalate to the Compliance Officer so we can assess the LPP question
- A court, not AUSTRAC, is the ultimate arbiter of any LPP dispute

TEST YOUR KNOWLEDGE

You act for a client (a company) in a property acquisition.

During the transaction, the client's director tells you: "The deposit money is coming from my brother's company in Dubai -- don't ask too many questions about where he got it".

You hold \$500,000 in trust as the deposit, and you have the client's passport, company extract, and trust deed on file. You form a suspicion on reasonable grounds that the funds may be proceeds of crime

What is CONFIDENTIAL (Rule 9) but NOT privileged?

- The client's identity documents (passport, company extract, ABN) -- facts, not advice
- The trust deed and company constitution -- transactional documents, not advice
- The amount held in trust (\$500,000) and the source (brother's company in Dubai) -- factual transaction details
- The director's statement about not asking questions -- an instruction/factual statement, not a communication seeking legal advice
- Your observation that the instruction was unusual and raised a red flag -- a factual observation

What is privileged (LPP)?

- Your written advice to the client on the legal structure of the acquisition and its tax implications -- prepared for the dominant purpose of giving legal advice
- Your internal file note analysing whether the proposed funding arrangement is lawful -- legal analysis prepared for the purpose of advising the client

What happens with the SMR?

- We **MUST** file the SMR -- the grounds of our suspicion (the director's statement, the Dubai source, the "don't ask questions" instruction) are all **FACTUAL** and **NOT** privileged
- We include: client identity, transaction details, the director's statement, the amount, the source, and your factual observations of unusual conduct
- We **DO NOT** include legal advice about the structure or your analysis of its lawfulness -- this is privileged
- You do **NOT** need to submit an LPP Form -- you are not withholding any information that makes up the grounds of your suspicion
- Full SMR filed within 3 business days. No LPP Form needed. Confidentiality overridden by law (Rule 9.2.2).

CHANGES TO THE UNIFORM LAW SOLICITOR CONDUCT RULES AND ACT RULES

- Immediate termination may itself tip off the client (e.g., if you terminate the day after requesting unusual documents).
- In some cases, you may need to **continue acting briefly** while AUSTRAC or law enforcement investigates — particularly if a "keep open notice" has been issued.
- If you are uncertain, **escalate to the Compliance Officer before taking any action** — they will determine the appropriate.

The proposed ASCR amendments (Law Council consultation, February 2026):

- The Law Council has proposed amendments to make obligations clearer for practitioners from 1 July 2026. Additional changes made to ACT rules.
- **Rule 8 (amended)**: Makes explicit that a solicitor must only give effect to instructions that are, and **continue to be**, lawful, proper and competent.
- **Rule 13 (amended)**: Clarifies that "just cause" includes where continuing would cause a breach of **ethical duties, professional responsibilities, or statutory obligations**.
- **New legal practice rule**: Requires retainers to inform clients that the solicitor is subject to statutory reporting obligations and that the law may prohibit the solicitor from providing reasons for termination.

SUSPICIOUS MATTER REPORTING

When to Report:

- Reasonable grounds to suspect a client is involved in ML/TF or a Commonwealth/State/Territory offence

SMR Timeframes:

- 24 hours: terrorism financing suspicions
- 3 business days: all other suspicious matters

Threshold Transaction Reports (TTRs):

- Required for physical currency transactions of \$10,000 or more

Process:

- Report suspicions to the Compliance Officer who determines if an SMR is required and submits to AUSTRAC

IDENTIFYING ML/TF RISKS IN PRACTICE

Red Flags and Indicators:

- High-value unfinanced transactions lacking clear economic purpose
- Unusual service requests inconsistent with legitimate needs
- Complex structures providing anonymity for beneficial owners
- Unusual physical or virtual currency transactions
- Politically Exposed Persons (PEPs) or their associates
- Third party intermediaries with unclear roles or funding
- Unexplained wealth inconsistent with known profile
- Reluctance to provide identification or false information

CHECKLIST FOR 1 JULY 2026

- AML policy and risk assessment
- Enrol with AUSTRAC for the commencement
- Review your clients and services
- Designate key roles
- Implement procedures for how you will identify risks in practice, escalation processes and how reporting will be managed
- Ensure you have a customised policy for your specific practice
- Consider using a VOI provider

Q&A