Anti-Money Laundering and Counter-Terrorism Financing Act 2006

No. 169, 2006 as amended

Compilation start date: 12 March 2014

Includes amendments up to: Act No. 74, 2013

Prepared by the Office of Parliamentary Counsel, Canberra

About this compilation

This compilation

This is a compilation of the *Anti-Money Laundering and Counter-Terrorism Financing Act 2006* as in force on 12 March 2014. It includes any commenced amendment affecting the legislation to that date.

This compilation was prepared on 12 March 2014.

The notes at the end of this compilation (the ***endnotes***) include information about amending laws and the amendment history of each amended provision.

Uncommenced amendments

The effect of uncommenced amendments is not reflected in the text of the compiled law but the text of the amendments is included in the endnotes.

Application, saving and transitional provisions for provisions and amendments

If the operation of a provision or amendment is affected by an application, saving or transitional provision that is not included in this compilation, details are included in the endnotes.

Modifications

If a provision of the compiled law is affected by a modification that is in force, details are included in the endnotes.

Provisions ceasing to have effect

If a provision of the compiled law has expired or otherwise ceased to have effect in accordance with a provision of the law, details are included in the endnotes.

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An Act to combat money laundering and the financing of terrorism, and for other purposes

Part 1—Introduction

1 Short title

This Act may be cited as the *Anti-Money Laundering and Counter-Terrorism Financing Act 2006*.

2 Commencement

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

Commencement information

Column 1	Column 2	Column 3
Provision(s)	**Commencement**	**Date/Details**
1. Sections 1 and 2 and anything in this Act not elsewhere covered by this table	The day on which this Act receives the Royal Assent.	12 December 2006
2. Sections 3 to 26	The day after this Act receives the Royal Assent.	13 December 2006
3. Part 2, Divisions 1 to 5	The first day after the end of the period of 12 months beginning on the day on which this Act receives the Royal Assent.	12 December 2007
4. Part 2, Division 6	The first day after the end of the period of 24 months beginning on the day on which this Act receives the Royal Assent.	12 December 2008
5. Part 2, Division 7	The first day after the end of the period of 12 months beginning on the day on which this Act receives the Royal Assent.	12 December 2007

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Section 2

Commencement information		
Column 1	**Column 2**	**Column 3**
Provision(s)	**Commencement**	**Date/Details**
6. Part 3, Divisions 1 to 4	The first day after the end of the period of 24 months beginning on the day on which this Act receives the Royal Assent.	12 December 2008
7. Part 3, Division 5	The first day after the end of the period of 6 months beginning on the day on which this Act receives the Royal Assent.	12 June 2007
8. Part 3, Division 6	The first day after the end of the period of 24 months beginning on the day on which this Act receives the Royal Assent.	12 December 2008
9. Parts 4, 5 and 6	The day after this Act receives the Royal Assent.	13 December 2006
10. Part 7	The first day after the end of the period of 12 months beginning on the day on which this Act receives the Royal Assent.	12 December 2007
11. Part 8	The first day after the end of the period of 6 months beginning on the day on which this Act receives the Royal Assent.	12 June 2007
12. Part 9	The day after this Act receives the Royal Assent.	13 December 2006
13. Part 10, Divisions 1 and 2	The day after this Act receives the Royal Assent.	13 December 2006
14. Part 10, Division 3	The first day after the end of the period of 12 months beginning on the day on which this Act receives the Royal Assent.	12 December 2007
15. Part 10, Division 4	The day after this Act receives the Royal Assent.	13 December 2006
16. Part 10, Division 5	The first day after the end of the period of 12 months beginning on the day on which this Act receives the Royal Assent.	12 December 2007
17. Part 10, Division 6	The first day after the end of the period of 6 months beginning on the day on which this Act receives the Royal Assent.	12 June 2007
18. Part 10, Division 7	The day after this Act receives the Royal Assent.	13 December 2006

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Commencement information		
Column 1	**Column 2**	**Column 3**
Provision(s)	**Commencement**	**Date/Details**
19. Parts 11 to 18	The day after this Act receives the Royal Assent.	13 December 2006
20. Schedule 1	The day after this Act receives the Royal Assent.	13 December 2006

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

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

3 Objects

(1) The objects of this Act include:

(a) to fulfil Australia's international obligations, including:

(i) Australia's international obligations to combat money laundering; and

(ii) Australia's international obligations to combat financing of terrorism; and

(b) to address matters of international concern, including:

(i) the need to combat money laundering; and

(ii) the need to combat financing of terrorism; and

(c) by addressing those matters of international concern, to affect beneficially Australia's relations with:

(i) foreign countries; and

(ii) international organisations.

Note 1: The objects of this Act are achieved by (among other things) requiring information to be given to the AUSTRAC CEO and by allowing certain other agencies to access information collected by the AUSTRAC CEO.

Note 2: The objects mentioned in paragraphs (1)(a),(b) and (c) relate to the external affairs power. Schedule 1 (alternative constitutional basis) contains provisions designed to attract other legislative powers (including the taxation power).

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(2) Relevant international obligations include obligations under the following:

(a) the United Nations Convention Against Corruption, done at New York on 31 October 2003 [2006] ATS 2;

(b) the United Nations Convention Against Transnational Organized Crime, done at New York on 15 November 2000 [2004] ATS 12;

(c) the Convention on Laundering, Search, Seizure and Confiscation of the Proceeds of Crime, done at Strasbourg on 8 November 1990 [1997] ATS 21;

(d) United Nations Security Council Resolution 1267 S/RES/1267 (1999);

(e) United Nations Security Council Resolution 1373 S/RES/1373 (2001);

(f) United Nations Security Council Resolution 1617 S/RES/1617 (2005).

(3) The following reflect international concern:

(a) the FATF Recommendations;

(b) the United Nations Convention Against Corruption, done at New York on 31 October 2003 [2006] ATS 2;

(c) the United Nations Convention Against Transnational Organized Crime, done at New York on 15 November 2000 [2004] ATS 12;

(d) the Convention on Laundering, Search, Seizure and Confiscation of the Proceeds of Crime, done at Strasbourg on 8 November 1990 [1997] ATS 21;

(e) the International Convention for the Suppression of the Financing of Terrorism, done at New York on 9 December 1999 [2002] ATS 23;

(f) United Nations General Assembly Resolution 51/210 A/RES/51/210 (1996);

(g) United Nations Security Council Resolution 1267 S/RES/1267 (1999);

(h) United Nations Security Council Resolution 1269 S/RES/1269 (1999);

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(i) United Nations Security Council Resolution 1373 S/RES/1373 (2001);

(j) United Nations Security Council Resolution 1456 S/RES/1456 (2003);

(k) United Nations Security Council Resolution 1617 S/RES/1617 (2005).

Note 1: ***FATF Recommendations*** is defined in section 5.

Note 2: In 2006, the text of international agreements in the Australian Treaty Series was accessible through the Australian Treaties Library on the AustLII website (www.austlii.edu.au).

Note 3: In 2006, the text of United Nations Security Council resolutions and United Nations General Assembly resolutions was accessible through the United Nations website (www.un.org).

4 Simplified outline

The following is a simplified outline of this Act:

- A reporting entity is a financial institution, or other person, who provides designated services. (Designated services are listed in section 6.)
- A reporting entity must carry out a procedure to verify a customer's identity before providing a designated service to the customer. However, in special cases, the procedure may be carried out after the provision of the designated service.
- Certain pre-commencement customers are subject to modified identification procedures.
- Certain low-risk services are subject to modified identification procedures.
- Reporting entities must report the following to the Chief Executive Officer of AUSTRAC (the Australian Transaction Reports and Analysis Centre):

  (a) suspicious matters;

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(b) certain transactions above a threshold.

- Certain international funds transfer instructions must be reported to the AUSTRAC CEO.
- Cross-border movements of physical currency must be reported to the AUSTRAC CEO, a customs officer or a police officer if the total amount moved is above a threshold.
- 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.
- Electronic funds transfer instructions must include certain information about the origin of the transferred money.
- Providers of registrable designated remittance services or registrable remittance network services must be registered with the AUSTRAC CEO.
- Reporting entities must have and comply with anti-money laundering and counter-terrorism financing programs.
- Financial institutions are subject to restrictions in connection with entering into correspondent banking relationships.

5 Definitions

In this Act:

account includes:

(a) a credit card account; and

(b) a loan account (other than a credit card account); and

(c) an account of money held in the form of units in:

(i) a cash management trust; or

(ii) a trust of a kind prescribed by the AML/CTF Rules.

To avoid doubt, it is immaterial whether:

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(d) an account has a nil balance; or

(e) any transactions have been allowed in relation to an account.

account provider: if an account is with a person, the person is the ***account provider*** for the account.

acquiring: in determining whether something is a designated service, ***acquiring*** includes anything that, under the regulations, is taken to be acquiring for the purposes of this definition.

ADI (short for authorised deposit-taking institution) means:

(a) a body corporate that is an ADI for the purposes of the *Banking Act 1959*; or

(b) the Reserve Bank of Australia; or

(c) a person who carries on State banking within the meaning of paragraph 51(xiii) of the Constitution.

AFP member (short for Australian Federal Police member) means a member or special member of the Australian Federal Police.

agency:

(a) a Department of the Commonwealth is taken to be an agency of the Commonwealth for the purposes of this Act;

(b) a Department of a State is taken to be an agency of the State for the purposes of this Act;

(c) a Department of a Territory is taken to be an agency of the Territory for the purposes of this Act.

allowing a transaction: in determining whether a person has allowed a transaction, it is immaterial whether the person was obliged to allow the transaction.

AML/CTF Rules (short for Anti-Money Laundering/Counter-Terrorism Financing Rules) means the rules made under section 229.

anti-money laundering and counter-terrorism financing program has the meaning given by section 83.

applicable customer identification procedure: for the purposes of the application of this Act to customers of a reporting entity,

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applicable customer identification procedure has the meaning ascertained in accordance with:

(a) if all of the designated services provided by the reporting entity are covered by item 54 of table 1 in section 6, and there is no joint anti-money laundering and counter-terrorism financing program that applies to, and has been adopted by, the reporting entity:

(i) a special anti-money laundering and counter-terrorism financing program that applies to, and has been adopted by, the reporting entity; or

(ii) if the program has been varied on one or more occasions—the program as varied; or

(b) in any other case:

(i) Part B of an anti-money laundering and counter-terrorism financing program that applies to, and has been adopted by, the reporting entity; or

(ii) if the program has been varied on one or more occasions—Part B of the program as varied.

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

approved means approved by the AUSTRAC CEO, in writing, for the purposes of the provision in which the term occurs.

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

approved deposit fund has the same meaning as in the *Superannuation Industry (Supervision) Act 1993*.

approved third-party bill payment system means a bill payment system prescribed by the AML/CTF Rules.

arrangement includes:

(a) any agreement, arrangement, understanding, promise or undertaking, whether express or implied, and whether or not enforceable, or intended to be enforceable, by legal proceedings; and

(b) any scheme, plan, proposal, action, course of action or course of conduct, whether unilateral or otherwise.

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ASIO means the Australian Security Intelligence Organisation.

ASIO Minister means the Minister responsible for administering the *Australian Security Intelligence Organisation Act 1979*.

ASIO official means:

(a) the Director-General of Security; or

(b) a person employed under paragraph 84(1)(a) or (b) of the *Australian Security Intelligence Organisation Act 1979*.

ASIS means the Australian Secret Intelligence Service.

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

ASIS official means:

(a) the Director-General of ASIS; or

(b) a person employed under subsection 33(1) of the *Intelligence Services Act 2001*; or

(c) a person engaged under subsection 34(1) of the *Intelligence Services Act 2001*.

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

assessment, in relation to an individual, means an assessment prepared or provided by a credit reporting body under paragraph 35B(1)(a) in relation to the individual.

AUSTRAC means the Australian Transaction Reports and Analysis Centre continued in existence by section 209.

AUSTRAC CEO means the Chief Executive Officer of AUSTRAC.

AUSTRAC information means:

(a) eligible collected information; or

(b) a compilation by the AUSTRAC CEO of eligible collected information; or

(c) an analysis by the AUSTRAC CEO of eligible collected information.

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Australia, when used in a geographical sense, includes the external Territories.

Australian account means an account held in Australia.

Australian carbon credit unit has the same meaning as in the *Carbon Credits (Carbon Farming Initiative) Act 2011*.

Australian Commission for Law Enforcement Integrity officer means a staff member (as defined by section 11 of the *Law Enforcement Integrity Commissioner Act 2006*) of the Australian Commission for Law Enforcement Integrity.

Australian financial services licence has the same meaning as in Chapter 7 of the *Corporations Act 2001*.

Australian government body means:

(a) the Commonwealth, a State or a Territory; or

(b) an agency or authority of:

(i) the Commonwealth; or

(ii) a State; or

(iii) a Territory.

authorised officer means:

(a) the AUSTRAC CEO; or

(b) a person for whom an appointment as an authorised officer is in force under section 145.

batched electronic funds transfer instruction means an electronic funds transfer instruction accepted by an ADI or a bank from a particular payer, where:

(a) the transfer instruction is one of a particular batch of electronic funds transfer instructions accepted by the ADI or bank from the payer; and

(b) the batch is, or is to be, passed on or dispatched in a single file that includes the complete payer information in respect of each of the electronic funds transfer instructions in the batch.

bearer negotiable instrument has the meaning given by section 17.

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beneficiary institution, in relation to an electronic funds transfer instruction:

(a) in the case of a multiple-institution person-to-person electronic funds transfer instruction—has the meaning given by subsection 8(1); or

(b) in the case of a same-institution person-to-person electronic funds transfer instruction—has the meaning given by subsection 8(2); or

(c) in the case of a multiple-institution same-person electronic funds transfer instruction—has the meaning given by subsection 9(1); or

(d) in the case of a same-institution same-person electronic funds transfer instruction—has the meaning given by subsection 9(2).

bet includes wager.

bill of exchange has the same meaning as in paragraph 51(xvi) of the Constitution, but does not include a cheque unless the cheque is a cheque that an ADI, bank or other institution draws on itself.

borrow has a meaning corresponding to ***loan***.

building society includes a society registered or incorporated as a co-operative housing society or similar society under:

(a) a law of a State or Territory; or

(b) a law of a foreign country or a part of a foreign country.

bullion includes anything that, under the regulations, is taken to be bullion for the purposes of this Act.

business includes a venture or concern in trade or commerce, whether or not conducted on a regular, repetitive or continuous basis.

business day means a day other than a Saturday, a Sunday or a public or bank holiday in the place concerned.

carbon unit has the same meaning as in the *Clean Energy Act 2011*.

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civil penalty order means an order under section 175.

civil penalty provision means a provision declared by this Act to be a civil penalty provision.

commence to provide a designated service means:

(a) if the designated service is provided at an instant of time—provide the service; or

(b) if the designated service is provided over a period of time—begin to provide the service.

commercial goods carrier means a person who, in the normal course of a business, carries goods or mail for reward.

commercial passenger carrier means a person who, in the normal course of a business, carries passengers for reward.

Commonwealth place means:

(a) a Commonwealth place within the meaning of the *Commonwealth Places (Application of Laws) Act 1970*; or

(b) a place in a Territory, where the place is owned by the Commonwealth.

Commonwealth Royal Commission means a Royal Commission within the meaning of the *Royal Commissions Act 1902*.

company has the same meaning as in the *Income Tax Assessment Act 1997*.

Note: Under the *Income Tax Assessment Act 1997*, ***company*** includes an unincorporated association or body of persons.

complete payer information has the meaning given by section 71.

compliance record of a reporting entity means:

(a) a record that relates to the obligations under this Act, the regulations or the AML/CTF Rules of the reporting entity; or

(b) a record, copy or extract retained under Part 10 by the reporting entity.

constitutional corporation means a corporation to which paragraph 51(xx) of the Constitution applies.

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contribution:

(a) in relation to an FHSA—has the same meaning as in the *First Home Saver Accounts Act 2008*; or

(b) in relation to an RSA—has the same meaning as in the *Retirement Savings Accounts Act 1997*.

controller of an eligible gaming machine venue has the meaning given by section 13.

control test: passing the control test has the meaning given by section 11.

correspondent banking relationship means a relationship that involves the provision by a financial institution (the ***first financial institution***) of banking services to another financial institution, where:

(a) the first financial institution carries on an activity or business at or through a permanent establishment of the financial institution in a particular country; and

(b) the other financial institution carries on an activity or business at or through a permanent establishment of the other financial institution in another country; and

(c) the correspondent banking relationship relates, in whole or in part, to those permanent establishments; and

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

(e) the banking services are not of a kind specified in the AML/CTF Rules.

For this purpose, ***banking service*** includes anything that, under the AML/CTF Rules, is taken to be a banking service for the purposes of this definition.

Note: For geographical links, see section 100.

country means Australia or a foreign country.

credit card has the same meaning as in Schedule 2 to the *Competition and Consumer Act 2010*.

credit reporting body has the same meaning as in the *Privacy Act 1988*.

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custodial or depository service: see the definition of ***providing a custodial or depository service***.

customer has the meaning given by section 6, and includes a prospective customer.

customs officer means:

(a) the Chief Executive Officer of Customs; or

(b) an officer of customs within the meaning of the *Customs Act 1901*.

damage, in relation to data, includes damage by erasure of data or addition of other data.

data includes:

(a) information in any form; or

(b) any program (or part of a program).

data storage device means a thing containing, or designed to contain, data for use by a computer.

debit card has the same meaning as in Schedule 2 to the *Competition and Consumer Act 2010*.

debit card account: if a debit card enables the holder of an account to debit the account, the account is a ***debit card account***.

Defence Department means the Department administered by the Defence Minister.

defence intelligence agency means DIGO, DIO or DSD.

Defence Minister means the Minister responsible for administering the *Defence Act 1903*.

Department of Foreign Affairs and Trade means the Department administered by the Foreign Affairs Minister.

derivative has the same meaning as in Chapter 7 of the *Corporations Act 2001*.

designated agency means:

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(a) the Australian Crime Commission; or
(b) ASIO; or
(c) the Australian Commission for Law Enforcement Integrity; or
(d) the Australian Competition and Consumer Commission; or
(e) Customs; or
(f) the Australian Federal Police; or
(g) the Australian Prudential Regulation Authority; or
(ga) ASIS; or
(gb) DIGO; or
(gc) DIO; or
(gd) DSD; or
(ge) ONA; or
(h) the Australian Securities and Investments Commission; or
(ha) the Clean Energy Regulator; or
(i) the Human Services Department; or
(k) a Commonwealth Royal Commission whose terms of reference include inquiry into whether unlawful conduct (however described) has, or might have, occurred; or
(ka) the Department of Foreign Affairs and Trade; or
(l) the Immigration Department; or
(m) IGIS; or
(n) the Treasury Department; or
(o) an authority or agency of the Commonwealth, where the authority or agency is specified in the regulations; or
(p) the police force or police service of a State or the Northern Territory; or
(q) the New South Wales Crime Commission; or
(r) the Independent Commission Against Corruption of New South Wales; or
(s) the Police Integrity Commission of New South Wales; or
(t) the Crime and Misconduct Commission of Queensland; or
(u) the Corruption and Crime Commission of Western Australia; or
(ua) the Integrity Commission of Tasmania; or

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(v) an authority or agency of a State or Territory, where the authority or agency has the responsibility of collecting or receiving taxation revenue of the State or Territory; or

(w) 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 regulations; or

(x) an authority or agency of a State or Territory, where the authority or agency is specified in the regulations.

designated business group means a group of 2 or more persons, where:

(a) each member of the group has elected, in writing, to be a member of the group, and the election is in force; and

(b) each election was made in accordance with the AML/CTF Rules; and

(c) no member of the group is a member of another designated business group; and

(d) each member of the group satisfies such conditions (if any) as are specified in the AML/CTF Rules; and

(e) the group is not of a kind that, under the AML/CTF Rules, is ineligible to be a designated business group.

designated remittance arrangement has the meaning given by section 10.

designated service has the meaning given by section 6.

DIGO means that part of the Department of Defence known as the Defence Imagery and Geospatial Organisation, and includes any part of the Defence Force that performs functions on behalf of that part of the Department.

DIO means that part of the Department of Defence known as the Defence Intelligence Organisation, and includes any part of the Defence Force that performs functions on behalf of that part of the Department.

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director of a company includes a member of a body corporate incorporated for a public purpose by a law of the Commonwealth, a State or a Territory.

Director-General of Security means the Director-General of Security holding office under the *Australian Security Intelligence Organisation Act 1979*.

disclose means divulge or communicate.

disposing of: in determining whether something is a designated service, ***disposing of*** includes anything that, under the regulations, is taken to be disposing of for the purposes of this definition.

DSD means that part of the Department of Defence known as the Defence Signals Directorate, and includes any part of the Defence Force that performs functions on behalf of that part of the Department.

e-currency means an internet-based, electronic means of exchange that is:

(a) known as any of the following:
  (i) e-currency;
  (ii) e-money;
  (iii) digital currency;
  (iv) a name specified in the AML/CTF Rules; and

(b) backed either directly or indirectly by:
  (i) precious metal; or
  (ii) bullion; or
  (iii) a thing of a kind prescribed by the AML/CTF Rules; and

(c) not issued by or under the authority of a government body;

and includes anything that, under the regulations, is taken to be e-currency for the purposes of this Act.

electronic communication has the same meaning as in the *Criminal Code*.

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electronic funds transfer instruction means:

(a) a multiple-institution person-to-person electronic funds transfer instruction; or

(b) a same-institution person-to-person electronic funds transfer instruction; or

(c) a multiple-institution same-person electronic funds transfer instruction; or

(d) a same-institution same-person electronic funds transfer instruction.

eligible collected information means:

(a) information obtained by the AUSTRAC CEO under:

(i) this Act; or

(ii) any other law of the Commonwealth; or

(iii) a law of a State or Territory; or

(b) information obtained by the AUSTRAC CEO from a government body; or

(c) information obtained by an authorised officer under Part 13, 14 or 15;

and includes FTR information (within the meaning of the *Financial Transaction Reports Act 1988*).

eligible gaming machine venue has the meaning given by section 13.

eligible international emissions unit has the same meaning as in the *Australian National Registry of Emissions Units Act 2011*.

eligible place means:

(a) a place for the examination of goods on landing, where the place is appointed under section 17 of the *Customs Act 1901*; or

(b) a warehouse in respect of which a warehouse licence (within the meaning of Part V of the *Customs Act 1901*) is in force; or

(c) a port, airport, wharf or boarding station appointed under section 15 of the *Customs Act 1901*.

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embarkation area means a section 234AA place within the meaning of the *Customs Act 1901*.

engage in conduct means:

(a) do an act; or

(b) omit to perform an act.

enrolment details, in relation to a person, means such information relating to the person as is specified in the AML/CTF Rules.

evidential burden, in relation to a matter, means the burden of adducing or pointing to evidence that suggests a reasonable possibility that the matter exists or does not exist.

examiner of the Australian Crime Commission means an examiner within the meaning of the *Australian Crime Commission Act 2002*.

exempt financial market operator issue of a security or derivative means the making available of the security or derivative, by the operator of a financial market (within the meaning of Chapter 7 of the *Corporations Act 2001*), in the course of operating the financial market.

exempt legal practitioner service means a service that, under the AML/CTF Rules, is taken to be an exempt legal practitioner service for the purposes of this Act.

external auditor means a person authorised under section 164 to be an external auditor for the purposes of this Act.

factoring includes anything that, under the regulations, is taken to be factoring for the purposes of this Act.

false customer name means a name other than a name by which the customer is commonly known.

FATF Recommendations (short for Financial Action Task Force Recommendations) means:

(a) all of the following Recommendations:

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(i) the Forty Recommendations adopted by the Financial Action Task Force on Money Laundering (FATF) at its plenary meeting on 20 June 2003;

(ii) the Special Recommendations on Terrorist Financing adopted by the Financial Action Task Force on Money Laundering (FATF) at its special plenary meeting on 31 October 2001;

(iii) Special Recommendation IX on Terrorist Financing adopted by the Financial Action Task Force on Money Laundering (FATF) at its plenary meeting on 20-22 October 2004; or

(b) if any or all of those Recommendations are amended—the Recommendations as so amended.

Note: In 2006, the text of the FATF Recommendations was available on the FATF website (www.fatf-gafi.org).

Federal Court means the Federal Court of Australia.

FHSA (short for first home saver account) has the same meaning as in the *First Home Saver Accounts Act 2008*.

FHSA provider (short for first home saver account provider) has the same meaning as in the *First Home Saver Accounts Act 2008*.

financial institution means:

(a) an ADI; or

(b) a bank; or

(c) a building society; or

(d) a credit union; or

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

financing of terrorism means conduct that amounts to:

(a) an offence against section 102.6 or Division 103 of the *Criminal Code*; or

(b) an offence against section 20 or 21 of the *Charter of the United Nations Act 1945*; or

(c) an offence against a law of a State or Territory that corresponds to an offence referred to in paragraph (a) or (b); or

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(d) an offence against a law of a foreign country or a part of a foreign country that corresponds to an offence referred to in paragraph (a) or (b).

Foreign Affairs Minister means the Minister responsible for administering the *Diplomatic Privileges and Immunities Act 1967*.

foreign country includes a region where:

(a) the region is a colony, territory or protectorate of a foreign country; or

(b) the region is part of a foreign country; or

(c) the region is under the protection of a foreign country; or

(d) a foreign country exercises jurisdiction or control over the region; or

(e) a foreign country is responsible for the region's international relations.

foreign exchange contract means a contract:

(a) to buy or sell currency (whether Australian or not); or

(b) to exchange one currency (whether Australian or not) for another (whether Australian or not).

foreign intelligence agency means a government body that has responsibility for:

(a) intelligence gathering for a foreign country; or

(b) the security of a foreign country.

foreign law enforcement agency means a government body that has responsibility for law enforcement in a foreign country or a part of a foreign country.

funds transfer chain has the meaning given by subsection 64(2).

game includes an electronic game, but does not include a lottery.

gaming chip or token means a chip or token for playing a game, where:

(a) the game is played for money or anything else of value; and

(b) the game is a game of chance or of mixed chance and skill.

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gaming machine means a machine for playing a game, where:

(a) the game is played for money or anything else of value; and

(b) the game is a game of chance or of mixed chance and skill.

government body means:

(a) the government of a country; or

(b) an agency or authority of the government of a country; or

(c) the government of part of a country; or

(d) an agency or authority of the government of part of a country.

guarantee includes anything that, under the regulations, is taken to be a guarantee for the purposes of this Act.

Human Services Department means the Department administered by the Human Services Minister.

Human Services Minister means the Minister administering the *Human Services (Centrelink) Act 1997*.

IGIS (short for Inspector-General of Intelligence and Security) means the agency consisting of:

(a) the Inspector-General of Intelligence and Security; and

(b) the APS employees assisting the Inspector-General of Intelligence and Security.

IGIS official (short for Inspector-General of Intelligence and Security official) means:

(a) the Inspector-General of Intelligence and Security; or

(b) any other person covered by subsection 32(1) of the *Inspector-General of Intelligence and Security Act 1986*.

Immigration Department means the Department responsible for the administration of the *Migration Act 1958*.

incorporated includes formed. This definition does not apply to the expression ***unincorporated***.

information obtained includes information obtained as a result of the production of a document.

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infringement notice means an infringement notice under section 184.

infringement notice provision has the meaning given by subsection 184(1A).

Inter-Governmental Committee means the Inter-Governmental Committee mentioned in section 8 of the *Australian Crime Commission Act 2002*.

international funds transfer instruction has the meaning given by section 46.

investigating officer means:

(a) a taxation officer; or

(b) an AFP member; or

(c) a customs officer (other than the Chief Executive Officer of Customs); or

(d) an examiner of the Australian Crime Commission; or

(e) a member of the staff of the Australian Crime Commission.

involves includes relates to.

issue, when used in relation to a security or derivative, includes grant or otherwise make available. The time when a derivative is issued is to be worked out under subsection 761E(3) of the *Corporations Act 2001*.

joint anti-money laundering and counter-terrorism financing program has the meaning given by subsection 85(1).

lease, when used in relation to goods, includes hire.

life policy means a life policy (within the meaning of the *Life Insurance Act 1995*), but does not include:

(a) a policy for which there is no prescribed minimum surrender value (other than that which may be provided for in the policy documentation and promotional material); or

(b) a regular premium policy to which paragraph (a) does not apply, where the amount, or the total of the amounts, payable by way of premium each year is not more than:

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(i) $1,500; or

(ii) if a greater amount is specified in the AML/CTF Rules—that greater amount; or

(c) a single premium policy to which paragraph (a) does not apply, where the amount of the single premium is not more than:

(i) $3,000; or

(ii) if a greater amount is specified in the AML/CTF Rules—that greater amount; or

(d) a contract of consumer credit insurance (within the meaning of the *Insurance Contracts Act 1984*).

For the purposes of this definition, the question of whether a policy has a prescribed minimum surrender value is to be determined in accordance with prudential standards made under section 230A of the *Life Insurance Act 1995* as in force from time to time.

loan includes:

(a) an advance of money; and

(b) the provision of credit or any other form of financial accommodation; and

(c) the payment of an amount for, on account of, on behalf of or at the request of a person where there is an obligation (whether expressed or implied) to repay the amount; and

(d) a transaction (whatever its terms or form) which in substance effects a loan of money;

but does not include:

(e) if goods (within the meaning of the *Competition and Consumer Act 2010*) are sold on credit—the provision by the seller of that credit; or

(f) if services (within the meaning of the *Competition and Consumer Act 2010*) are provided on credit—the provision by the provider of the service of that credit; or

(g) anything that, under the AML/CTF Rules, is taken not to be a loan for the purposes of this Act.

make available, when used in relation to money, includes reducing the balance of a loan account.

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member of the staff of the Australian Crime Commission has the same meaning as in the *Australian Crime Commission Act 2002*.

modifications includes additions, omissions and substitutions.

money includes:

(a) physical currency; and

(b) money held in an account, whether denominated in Australian currency or any other currency; and

(c) money held on deposit, whether denominated in Australian currency or any other currency; and

(d) e-currency, however amounts of the e-currency are expressed.

money laundering means conduct that amounts to:

(a) an offence against Division 400 of the *Criminal Code*; or

(b) an offence against a law of a State or Territory that corresponds to an offence referred to in paragraph (a); or

(c) an offence against a law of a foreign country or of a part of a foreign country that corresponds to an offence referred to in paragraph (a).

money laundering and terrorism financing risk assessment has the meaning given by subsection 165(6).

monitoring powers has the meaning given by section 148.

monitoring warrant means a warrant issued under section 159.

move physical currency into Australia has the meaning given by section 58.

move physical currency out of Australia has the meaning given by section 57.

multiple-institution person-to-person electronic funds transfer instruction has the meaning given by subsection 8(1).

multiple-institution same-person electronic funds transfer instruction has the meaning given by subsection 9(1).

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non-designated Commonwealth agency means an authority or agency of the Commonwealth that is not a designated agency.

non-financier means a person who is not:

(a) an ADI; or

(b) a bank; or

(c) a building society; or

(d) a credit union; or

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

non-reportable cross-border movement of physical currency means:

(a) a movement of physical currency out of Australia; or

(b) a movement of physical currency into Australia;

for which a report under section 53 is not required.

non-reportable transaction: if:

(a) a reporting entity commences to provide, or provides, a designated service to a customer; and

(b) the provision of the service involves a transaction; and

(c) the transaction is not a threshold transaction;

the transaction is a ***non-reportable transaction***.

offence:

(a) a reference in this Act to an offence against a law of the Commonwealth (including this Act) includes a reference to an offence against section 6 of the *Crimes Act 1914* that relates to such an offence; and

(b) a reference in this Act to a particular offence includes a reference to an offence against section 6 of the *Crimes Act 1914* that relates to that particular offence.

Note: For other ancillary offences, see section 11.6 of the *Criminal Code*.

officer:

(a) a director or secretary of a company is taken to be an officer of the company for the purposes of this Act;

(b) a partner of a partnership is taken to be an officer of the partnership for the purposes of this Act;

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(c) a trustee or manager of a trust is taken to be an officer of the trust for the purposes of this Act.

official of a designated agency or a non-designated Commonwealth agency has the meaning given by section 22.

ONA means the Office of National Assessments established by the *Office of National Assessments Act 1977*.

opening, in relation to an account, means creating the account. To avoid doubt, it is immaterial whether:

(a) the account number has been given to the holder of the account; or

(b) the holder of the account, or any other signatory to the account, can conduct a transaction in relation to the account.

ordering institution, in relation to an electronic funds transfer instruction:

(a) in the case of a multiple-institution person-to-person electronic funds transfer instruction—has the meaning given by subsection 8(1); or

(b) in the case of a same-institution person-to-person electronic funds transfer instruction—has the meaning given by subsection 8(2); or

(c) in the case of a multiple-institution same-person electronic funds transfer instruction—has the meaning given by subsection 9(1); or

(d) in the case of a same-institution same-person electronic funds transfer instruction—has the meaning given by subsection 9(2).

owner-managed branch of an ADI has the meaning given by section 12.

partnership has the same meaning as in the *Income Tax Assessment Act 1997*.

payee, in relation to an electronic funds transfer instruction:

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(a) in the case of a multiple-institution person-to-person electronic funds transfer instruction—has the meaning given by subsection 8(1); or

(b) in the case of a same-institution person-to-person electronic funds transfer instruction—has the meaning given by subsection 8(2); or

(c) in the case of a multiple-institution same-person electronic funds transfer instruction—has the meaning given by subsection 9(1); or

(d) in the case of a same-institution same-person electronic funds transfer instruction—has the meaning given by subsection 9(2).

payer, in relation to an electronic funds transfer instruction:

(a) in the case of a multiple-institution person-to-person electronic funds transfer instruction—has the meaning given by subsection 8(1); or

(b) in the case of a same-institution person-to-person electronic funds transfer instruction—has the meaning given by subsection 8(2); or

(c) in the case of a multiple-institution same-person electronic funds transfer instruction—has the meaning given by subsection 9(1); or

(d) in the case of a same-institution same-person electronic funds transfer instruction—has the meaning given by subsection 9(2).

penalty unit has the meaning given by section 4AA of the *Crimes Act 1914*.

permanent establishment has the meaning given by section 21.

person means any of the following:

(a) an individual;

(b) a company;

(c) a trust;

(d) a partnership;

(e) a corporation sole;

(f) a body politic.

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Note: See also sections 237 (partnerships), 238 (unincorporated associations) and 239 (trusts with multiple trustees).

personal information has the same meaning as in the *Privacy Act 1988*.

physical currency means the coin and printed money (whether of Australia or of a foreign country) that:

(a) is designated as legal tender; and

(b) circulates as, and is customarily used and accepted as, a medium of exchange in the country of issue.

police officer means:

(a) an AFP member; or

(b) a member of the police force or police service of a State or Territory.

precious metal means:

(a) gold; or

(b) silver; or

(c) platinum; or

(d) palladium; or

(e) iridium; or

(f) osmium; or

(g) rhodium; or

(h) a metal specified in the regulations; or

(i) any alloy or other substance containing:

(i) gold; or

(ii) silver; or

(iii) platinum; or

(iv) palladium; or

(v) iridium; or

(vi) osmium; or

(vii) rhodium; or

(viii) a metal specified in the regulations.

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prescribed foreign country means a foreign country declared by the regulations to be a prescribed foreign country for the purposes of this Act.

printed money means money comprising a note printed, written or otherwise made on polymer, paper or any other material.

produce includes permit access to.

promissory note has the same meaning as in paragraph 51(xvi) of the Constitution.

property means any legal or equitable estate or interest in real or personal property, including a contingent or prospective one, but does not include money.

provide includes supply, grant or confer.

providing a custodial or depository service includes engaging in conduct that, under subsection 766E(1) of the *Corporations Act 2001*, constitutes providing a custodial or depository service within the meaning of Chapter 7 of that Act, but does not include:

(a) conduct covered by subsection 766E(3) of that Act; or

(b) conduct specified in the AML/CTF Rules.

public official means:

(a) an employee or official of a government body; or

(b) an individual who holds or performs the duties of an appointment, office or position under a law of a country or of part of a country; or

(c) an individual who holds or performs the duties of an appointment, office or position created by custom or convention of a country or of part of a country; or

(d) an individual who is otherwise in the service of a government body (including service as a member of a military force, police force or police service); or

(e) a member of the executive, judiciary or magistracy of a country or of part of a country.

qualified accountant means a person who is a member of:

(a) CPA Australia; or

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(b) the Institute of Chartered Accountants in Australia; or
(c) a body specified in the AML/CTF Rules.

receives a designated service: if a reporting entity provides a designated service to a customer, the customer ***receives*** the designated service from the reporting entity.

registered charity means an entity that is registered under the *Australian Charities and Not-for-profits Commission Act 2012* as the type of entity mentioned in column 1 of item 1 of the table in subsection 25-5(5) of that Act.

registered independent remittance dealer means a person registered under section 75C as an independent remittance dealer.

registered remittance affiliate, of a registered remittance network provider, means a person registered under section 75C as a remittance affiliate of the registered remittance network provider.

registered remittance network provider means a person registered under section 75C as a remittance network provider.

registrable designated remittance service means a designated service that:

(a) is covered by item 31 or 32 of table 1 in section 6; and
(b) is provided by a person at or through a permanent establishment of the person in Australia; and
(c) is not of a kind specified in the AML/CTF Rules.

registrable details, in relation to a person, means such information relating to the person as is specified in the AML/CTF Rules.

Note: A person's business name and business address are examples of information that could be specified in the AML/CTF Rules.

registrable remittance network service means a designated service that:

(a) is covered by item 32A of table 1 in section 6; and
(b) is not of a kind specified in the AML/CTF Rules.

registration, of a person, means registration of the person as any of the following:

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(a) a remittance network provider;
(b) an independent remittance dealer;
(c) a remittance affiliate of a registered remittance network provider.

remittance arrangement has the meaning given by section 10.

Remittance Sector Register has the meaning given by section 75.

reporting entity means a person who provides a designated service.

reporting entity business premises means:

(a) premises, or a part of premises, used wholly or partly for the purposes of the business operations of:
  (i) a reporting entity; or
  (ii) an agent of a reporting entity; or
(b) premises, or a part of premises, used wholly or partly for the purposes of the storage (whether in electronic form or otherwise) of records relating to the business operations of:
  (i) a reporting entity; or
  (ii) an agent of a reporting entity;

  where the occupier of the premises, or the part of premises, carries on a business of storing records at the premises or the part of premises.

required transfer information has the meaning given by section 70.

resident of a country has the meaning given by section 14.

reviewable decision has the meaning given by section 233B.

RSA (short for retirement savings account) has the same meaning as in the *Retirement Savings Accounts Act 1997*.

RSA provider (short for retirement savings account provider) has the same meaning as in the *Retirement Savings Accounts Act 1997*.

same-institution person-to-person electronic funds transfer instruction has the meaning given by subsection 8(2).

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same-institution same-person electronic funds transfer instruction has the meaning given by subsection 9(2).

Secretary means the Secretary of the Department.

security has the meaning given by section 92 of the *Corporations Act 2001* (for this purpose, disregard subsections 92(3) and (4) of that Act).

Note: ***Security*** includes an interest in a managed investment scheme.

self managed superannuation fund has the same meaning as in the *Superannuation Industry (Supervision) Act 1993*.

send, in relation to physical currency, includes send through the post.

service includes anything covered by an item of a table in section 6.

shell bank has the meaning given by section 15.

signatory, in relation to an account with an account provider, means the person, or one of the persons, on whose instructions (whether required to be in writing or not and whether required to be signed or not) the account provider conducts transactions in relation to the account.

sinking fund policy has the same meaning as in the *Life Insurance Act 1995*.

special anti-money laundering and counter-terrorism financing program has the meaning given by subsection 86(1).

standard anti-money laundering and counter-terrorism financing program has the meaning given by subsection 84(1).

state of mind of a person includes:

(a) the knowledge, intention, opinion, suspicion, belief or purpose of the person; and

(b) the person's reasons for the intention, opinion, belief or purpose.

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State/Territory Royal Commission means:

(a) a Royal Commission of a State or Territory; or

(b) a commission of inquiry of a State or Territory.

stored value card does not include a debit card or credit card but includes a portable device (other than a debit card or credit card) that:

(a) is capable of:

(i) storing monetary value in a form other than physical currency; or

(ii) being used to gain access to monetary value stored in such a form; and

(b) is of a kind prescribed by the regulations.

subject to a requirement includes subject to a prohibition.

subsidiary has the same meaning as in the *Corporations Act 2001*.

superannuation fund has the same meaning as in the *Superannuation Industry (Supervision) Act 1993*.

suspicious matter reporting obligation has the meaning given by subsection 41(1).

taxation law has the same meaning as in the *Taxation Administration Act 1953*.

taxation officer means:

(a) a Second Commissioner of Taxation; or

(b) a Deputy Commissioner of Taxation; or

(c) a person appointed or engaged under the *Public Service Act 1999* and performing duties in the Australian Taxation Office.

threshold transaction means:

(a) a transaction involving the transfer of physical currency, where the total amount of physical currency transferred is not less than $10,000; or

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(b) a transaction involving the transfer of money in the form of e-currency, where the total amount of e-currency transferred is not less than $10,000; or

(c) if:

(i) the regulations provide that this definition applies to a specified transaction involving money; and

(ii) the regulations provide that a specified amount is the transaction threshold for the specified transaction;

the specified transaction, where the total amount transferred is not less than the transaction threshold for the transaction; or

(d) if:

(i) the regulations provide that this definition applies to a specified transaction involving the transfer of property; and

(ii) the regulations provide that a specified amount is the transaction threshold for the specified transaction;

the specified transaction, where the total value transferred is not less than the transaction threshold for the transaction.

Paragraphs (a) and (b) do not limit paragraph (c).

Note 1: See also section 18 (translation of foreign currency to Australian currency).

Note 2: See also section 19 (translation of e-currency to Australian currency).

Note 3: For specification by class, see subsection 13(3) of the *Legislative Instruments Act 2003*.

tracing information has the meaning given by section 72.

transaction includes a transaction of a non-commercial nature.

transfer includes any act or thing, or any series or combination of acts or things, that may reasonably be regarded as the economic equivalent of a transfer (for example, debiting an amount from a person's account and crediting an equivalent amount to another person's account).

transferor entity, in relation to a remittance arrangement, has the meaning given by paragraph 10(3)(a).

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Treasury Department means the Department administered by the Treasurer.

trust means a person in the capacity of trustee or, as the case requires, a trust estate.

trustee has the same meaning as in the *Income Tax Assessment Act 1997*.

trust estate has the same meaning as in the *Income Tax Assessment Act 1997*.

ultimate transferee entity, in relation to a remittance arrangement, has the meaning given by paragraph 10(3)(b).

unincorporated association means an unincorporated association or body of persons.

unique reference number, for an electronic funds transfer instruction, means a combination of any or all of the following:

(a) letters;
(b) digits;
(c) characters;
(d) symbols;

which distinguishes the transfer instruction in a way that, either:

(e) alone; or
(f) in conjunction with any other information in the transfer instruction;

enables the ordering institution to identify the payer.

Examples:

(a) a combination of a BSB and account number;
(b) a reference number generated by the ordering institution.

value, in relation to transferred property, means the market value of the property as at the time of the transfer. In working out the market value of the property, disregard anything that would prevent or restrict conversion of the property to money.

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verification request, in relation to an individual, means a request made by a reporting entity under paragraph 35A(1)(b) for an assessment in relation to the individual.

warrant premises, in relation to a monitoring warrant, means the premises to which the warrant relates.

6 Designated services

(1) For the purposes of this Act, the following tables define:
  (a) the provision of a ***designated service***; and
  (b) the person (the ***customer***) to whom the designated service is provided.

Table 1—Financial services

(2) Table 1 is as follows:

Table 1—Financial services

Item	Provision of a designated service	Customer of the designated service
1	in the capacity of account provider, opening an account, where the account provider is: (a) an ADI; or (b) a bank; or (c) a building society; or (d) a credit union; or (e) a person specified in the AML/CTF Rules	the holder of the account
2	in the capacity of account provider for a new or existing account, allowing a person to become a signatory to the account, where the account provider is: (a) an ADI; or (b) a bank; or (c) a building society; or (d) a credit union; or	the signatory

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Table 1—Financial services		
Item	**Provision of a designated service**	**Customer of the designated service**
	(e) a person specified in the AML/CTF Rules	
3	in the capacity of account provider for an account, allowing a transaction to be conducted in relation to the account, where the account provider is: (a) an ADI; or (b) a bank; or (c) a building society; or (d) a credit union; or (e) a person specified in the AML/CTF Rules	both: (a) the holder of the account; and (b) each other signatory to the account
4	accepting money on deposit (otherwise than by way of deposit to an account), where the deposit-taker is: (a) an ADI; or (b) a bank; or (c) a building society; or (d) a credit union; or (e) a person specified in the AML/CTF Rules	the person in whose name the deposit is held
5	in the capacity of deposit-taker for a deposit, allowing a transaction to be conducted in relation to the deposit, where the deposit-taker is: (a) an ADI; or (b) a bank; or (c) a building society; or (d) a credit union; or (e) a person specified in the AML/CTF Rules	the person in whose name the deposit is held
6	making a loan, where the loan is made in the course of carrying on a	the borrower

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Table 1—Financial services

Item	Provision of a designated service	Customer of the designated service
	loans business	
7	in the capacity of: (a) lender for a loan; or (b) assignee (whether immediate or otherwise) of the lender for a loan; allowing the borrower to conduct a transaction in relation to the loan, where the loan was made in the course of carrying on a loans business	the borrower
8	factoring a receivable, where the receivable is factored in the course of carrying on a factoring business	the person whose receivable is factored
9	forfaiting: (a) a bill of exchange; or (b) a promissory note; where the bill or note is forfaited in the course of carrying on a forfaiting business	the person whose bill or note is forfaited
10	supplying goods by way of lease under a finance lease, where: (a) the goods are not acquired by a consumer (within the meaning of section 4B of the *Competition and Consumer Act 2010*); and (b) the supply is in the course of carrying on a finance leasing business	the lessee
11	in the capacity of lessor under a finance lease, allowing the lessee to conduct a transaction in relation to the lease, where: (a) the goods were not acquired by a consumer (within the meaning of section 4B of the *Competition*	the lessee

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Table 1—Financial services

Item	Provision of a designated service	Customer of the designated service
	and Consumer Act 2010); and (b) the supply was in the course of carrying on a finance leasing business	
12	supplying goods to a person by way of hire-purchase, where: (a) the goods are not acquired by a consumer (within the meaning of section 4B of the *Competition and Consumer Act 2010*); and (b) the supply is in the course of carrying on a business of supplying goods	the person
13	in the capacity of supplier of goods to a person by way of hire-purchase, allowing the person to conduct a transaction in relation to the hire-purchase agreement concerned, where: (a) the goods were not acquired by a consumer (within the meaning of section 4B of the *Competition and Consumer Act 2010*); and (b) the supply was in the course of carrying on a business of supplying goods	the person
14	in the capacity of account provider for an account, providing a chequebook, or a similar facility, that enables the holder of the account to draw a cheque on the account	the holder of the account
15	in the capacity of building society or credit union, providing a chequebook, or a similar facility, that enables the holder of an account with the building society or	the holder of the account with the building society or credit union

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Table 1—Financial services

Item	Provision of a designated service	Customer of the designated service
	credit union to draw a cheque on an account held by the building society or credit union	
16	in the capacity of trustee or manager of a trust, providing a chequebook, or a similar facility, that enables the holder of a beneficial interest in the trust to draw a cheque on an account held by the trustee or manager of the trust	the holder of the beneficial interest in the trust
17	issuing: (a) a bill of exchange; or (b) a promissory note; or (c) a letter of credit; to a person, where the bill, note or letter is issued by: (d) an ADI; or (e) a bank; or (f) a building society; or (g) a credit union; or (h) a person specified in the AML/CTF Rules	the person
18	issuing a debit card that enables the holder of an account to debit the account, where the account provider is: (a) an ADI; or (b) a bank; or (c) a building society; or (d) a credit union; or (e) a person specified in the AML/CTF Rules	the holder of the account
18A	issuing a debit card that enables a signatory to an account (other than	the signatory

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Table 1—Financial services

Item	Provision of a designated service	Customer of the designated service
	the holder of the account) to debit the account, where the account provider is: (a) an ADI; or (b) a bank; or (c) a building society; or (d) a credit union; or (e) a person specified in the AML/CTF Rules	
19	in the capacity of building society or credit union, issuing a debit card that enables the holder of an account with the building society or credit union to debit an account held by the building society or credit union, where the account provider of the last-mentioned account is: (a) an ADI; or (b) a bank; or (c) a person specified in the AML/CTF Rules	the holder of the account with building society or credit union
19A	in the capacity of building society or credit union, issuing a debit card that enables a signatory to an account with the building society or credit union (other than the holder of the account with the building society or credit union) to debit an account held by the building society or credit union, where the account provider of the last-mentioned account is: (a) an ADI; or (b) a bank; or (c) a person specified in the	the signatory

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Table 1—Financial services

Item	Provision of a designated service	Customer of the designated service
	AML/CTF Rules	
20	in the capacity of trustee or manager of a trust, issuing a debit card that enables the holder of a beneficial interest in the trust to debit an account held by the trustee or manager of the trust, where the account provider is: (a) an ADI; or (b) a bank; or (c) a building society; or (d) a credit union; or (e) a person specified in the AML/CTF Rules	the holder of the beneficial interest in the trust
20A	in the capacity of trustee or manager of a trust, issuing a debit card that enables a signatory authorised by the holder of a beneficial interest in the trust to debit an account held by the trustee or manager of the trust, where the account provider is: (a) an ADI; or (b) a bank; or (c) a building society; or (d) a credit union; or (e) a person specified in the AML/CTF Rules	the signatory
21	issuing a stored value card to a person, where: (a) the whole or a part of the monetary value stored in connection with the card may be withdrawn in cash; and (b) the monetary value stored in connection with the card is not	the person

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Table 1—Financial services		
Item	**Provision of a designated service**	**Customer of the designated service**
	less than: (i) $1,000; or (ii) if another amount is specified in the regulations—that other amount	
22	increasing the monetary value stored in connection with a stored value card held by a person, where: (a) the whole or a part of the monetary value stored in connection with the card may be withdrawn in cash; and (b) the increased monetary value is not less than: (i) $1,000; or (ii) if another amount is specified in the regulations—that other amount	the person
23	issuing a stored value card to a person, where: (a) no part of the monetary value stored in connection with the card may be withdrawn in cash; and (b) the monetary value stored in connection with the card is not less than: (i) $5,000; or (ii) if another amount is specified in the regulations—that other amount	the person

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Table 1—Financial services

Item	Provision of a designated service	Customer of the designated service
24	increasing the monetary value stored in connection with a stored value card held by a person, where: (a) no part of the monetary value stored in connection with the card may be withdrawn in cash; and (b) the increased monetary value is not less than: (i) $5,000; or (ii) if another amount is specified in the regulations—that other amount	the person
25	issuing a traveller's cheque to a person	the person
26	in the capacity of issuer of a traveller's cheque, cashing or redeeming a traveller's cheque held by a person	the person
27	issuing a money order, postal order or similar order to a person, where the face value of the order is not less than: (a) $1,000; or (b) if another amount is specified in the regulations—that other amount	the person
28	in the capacity of issuer of a money order, postal order or similar order, cashing or redeeming a money order, postal order or similar order held by a person, where the face value of the order is not less than: (a) $1,000; or (b) if another amount is specified in	the person

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Table 1—Financial services

Item	Provision of a designated service	Customer of the designated service
	the regulations—that other amount	
29	in the capacity of ordering institution, accepting an electronic funds transfer instruction from the payer	the payer
30	in the capacity of beneficiary institution, making money available to the payee as a result of an electronic funds transfer instruction	the payee
31	in the capacity of a non-financier carrying on a business of giving effect to remittance arrangements, accepting an instruction from a transferor entity for the transfer of money or property under a designated remittance arrangement	the transferor entity
32	in the capacity of a non-financier carrying on a business of giving effect to remittance arrangements, making money or property available, or arranging for it to be made available, to an ultimate transferee entity as a result of a transfer under a designated remittance arrangement	the ultimate transferee entity
32A	operating a network of persons by providing a platform or operating system (however described), where: (a) the persons in the network provide a designated service referred to in item 31 or 32 by means of the platform or operating system; and (b) the operator is a non-financier.	the person who provides designated services as part of the network
33	in the capacity of agent of a person, acquiring or disposing of:	the person

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Table 1—Financial services

Item	Provision of a designated service	Customer of the designated service
	(a) a security; or (b) a derivative; or (baa) a carbon unit; or (ba) an Australian carbon credit unit; or (bb) an eligible international emissions unit; or (c) a foreign exchange contract; on behalf of the person, where: (d) the acquisition or disposal is in the course of carrying on a business of acquiring or disposing of securities, derivatives, carbon units, Australian carbon credit units, eligible international emissions units or foreign exchange contracts in the capacity of agent; and (e) the service is not specified in the AML/CTF Rules	
34	in the capacity of agent of a person, acquiring or disposing of: (a) a bill of exchange; or (b) a promissory note; or (c) a letter of credit; on behalf of the person, where: (d) the acquisition or disposal is in the course of carrying on a business of acquiring or disposing of bills of exchange, promissory notes or letters of credit in the capacity of agent; and (e) the service is not specified in the AML/CTF Rules	the person

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Table 1—Financial services

Item	Provision of a designated service	Customer of the designated service
35	issuing or selling a security or derivative to a person, where: (a) the issue or sale is in the course of carrying on a business of issuing or selling securities or derivatives; and (b) in the case of an issue of a security or derivative—the issue does not consist of the issue by a company of either of the following: (i) a security of the company (other than an interest in a managed investment scheme); or (ii) an option to acquire a security of the company (other than an option to acquire an interest in a managed investment scheme); and (ba) in the case of an issue of a security or derivative—the issue does not consist of the issue by a government body of a security of the government body or of an option to acquire a security of the government body; and (c) in the case of an issue of a security or derivative—the issue is not an exempt financial market operator issue; and (d) such other conditions (if any) as are set out in the AML/CTF Rules are satisfied	the person
36	in the capacity of issuer of a bearer bond, redeeming a bearer bond	the person to whom the proceeds of the redemption are paid
37	issuing, or undertaking liability as	the holder of the policy

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Table 1—Financial services

Item	Provision of a designated service	Customer of the designated service
	the insurer under, a life policy or sinking fund policy	
38	in the capacity of insurer for a life policy or sinking fund policy, accepting a premium in relation to the policy	the holder of the policy
39	in the capacity of insurer for a life policy or sinking fund policy, making a payment to a person under the policy	the person
40	in the capacity of provider of a pension or annuity, accepting payment of the purchase price for a new pension or annuity, where: (a) the provider is not a self managed superannuation fund; or (b) the pension or annuity is provided in the course of carrying on a business of providing pensions or annuities	the person to whom the pension or annuity is to be paid
41	in the capacity of provider of a pension or annuity, making a payment to a person by way of: (a) a payment of the pension or annuity; or (b) an amount resulting from the commutation, in whole or in part, of the pension or annuity; or (c) the residual capital value of the pension or annuity; where the provider is not a self managed superannuation fund	the person
42	in the capacity of trustee of: (a) a superannuation fund (other	the member

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Table 1—Financial services

Item	Provision of a designated service	Customer of the designated service
	than a self managed superannuation fund); or (b) an approved deposit fund; accepting a contribution, roll-over or transfer in respect of a new or existing member of the fund	
43	in the capacity of trustee of: (a) a superannuation fund (other than a self managed superannuation fund); or (b) an approved deposit fund; cashing the whole or a part of an interest held by a member of the fund	the member, or if the member has died, the person, or each of the persons, who receives the cashed whole or a cashed part of the relevant interest
43A	in the capacity of FHSA provider, accepting a contribution, roll-over or transfer to an FHSA in respect of a new or existing FHSA holder	the FHSA holder
43B	in the capacity of FHSA provider, cashing the whole or a part of an interest held by an FHSA holder	the FHSA holder, or if the FHSA holder has died, the person, or each of the persons, who receives the cashed whole or a cashed part of the relevant interest
44	in the capacity of RSA provider, accepting a contribution, roll-over or transfer to an RSA in respect of a new or existing RSA holder	the RSA holder
45	in the capacity of RSA provider, cashing the whole or a part of an interest held by an RSA holder	the RSA holder, or if the RSA holder has died, the person, or each of the persons, who receives the cashed whole or a cashed part of the relevant interest
46	providing a custodial or depository service, where: (a) the service is provided in the course of carrying on a business	the client of the service

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Table 1—Financial services		
Item	**Provision of a designated service**	**Customer of the designated service**
	of providing custodial or depository services; and (b) the service is not an exempt legal practitioner service	
47	providing a safe deposit box, or similar facility, where: (a) the service is provided in the course of carrying on a business of providing safe deposit boxes or similar facilities; and (b) the service is not an exempt legal practitioner service	the person who is, or each of the persons who are, authorised to lodge items in the safe deposit box or similar facility
48	guaranteeing a loan, where the guarantee is given in the course of carrying on a business of guaranteeing loans	both: (a) the lender; and (b) the borrower
49	in the capacity of guarantor of a loan, making a payment to the lender, where the guarantee was given in the course of carrying on a business of guaranteeing loans	both: (a) the lender; and (b) the borrower
50	exchanging one currency (whether Australian or not) for another (whether Australian or not), where the exchange is provided in the course of carrying on a currency exchange business	the person whose currency is exchanged

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Table 1—Financial services

Item	Provision of a designated service	Customer of the designated service
51	collecting physical currency, or holding physical currency collected, from or on behalf of a person, where: (a) the service is provided in the course of carrying on a business of collecting or holding physical currency; and (b) the physical currency was not collected by the provider of the service as consideration for the supply of goods (within the meaning of the *Competition and Consumer Act 2010*); and (c) the physical currency was not collected by the provider of the service as consideration for the supply of services (within the meaning of the *Competition and Consumer Act 2010*) other than the service of collecting or holding physical currency; and (d) the physical currency was not collected as a donation to a registered charity	the person
52	preparing a pay-roll, on behalf of a person, in whole or in part from physical currency collected, where the service is provided in the course of carrying on a business of preparing pay-rolls	the person
53	delivering physical currency (including pay-rolls) to a person, where the service is provided in the course of carrying on a business of delivering physical currency	the person

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Table 1—Financial services		
Item	**Provision of a designated service**	**Customer of the designated service**
54	in the capacity of holder of an Australian financial services licence, making arrangements for a person to receive a designated service (other than a service covered by this item)	the person

Note: For specification by class, see subsection 13(3) of the *Legislative Instruments Act 2003*.

Table 2—Bullion

(3) Table 2 is as follows:

Table 2—Bullion		
Item	**Provision of a designated service**	**Customer of the designated service**
1	buying bullion, where the buying is in the course of carrying on a business	the person from whom the bullion is bought
2	selling bullion, where the selling is in the course of carrying on a business	the person to whom the bullion is sold

Table 3—Gambling services

(4) Table 3 is as follows:

Table 3—Gambling services		
Item	**Provision of a designated service**	**Customer of the designated service**
1	receiving or accepting a bet placed or made by a person, where the service is provided in the course of carrying on a business	the person

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Table 3—Gambling services

Item	Provision of a designated service	Customer of the designated service
2	placing or making a bet on behalf of a person, where the service is provided in the course of carrying on a business	the person
3	introducing a person who wishes to make or place a bet to another person who is willing to receive or accept the bet, where the service is provided in the course of carrying on a business	both: (a) the person who wishes to make or place the bet; and (b) the person who is willing to receive or accept the bet
4	paying out winnings in respect of a bet, where the service is provided in the course of carrying on a business	the person to whom the winnings are paid
5	in the capacity of controller of an eligible gaming machine venue, allowing a person to play a game on a gaming machine located at the venue, where the service is provided in the course of carrying on a business	the person
6	accepting the entry of a person into a game, where: (a) the game is played for money or anything else of value; and (b) the game is a game of chance or of mixed chance and skill; and (c) the service is provided in the course of carrying on a business; and (d) the game is not played on a gaming machine located at an eligible gaming machine venue	the person
7	exchanging money for gaming chips or tokens, where the service is provided in the course of carrying on a business	the person whose money is exchanged

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Table 3—Gambling services

Item	Provision of a designated service	Customer of the designated service
8	exchanging gaming chips or tokens for money, where the service is provided in the course of carrying on a business	the person whose gaming chips or tokens are exchanged
9	paying out winnings, or awarding a prize, in respect of a game, where: (a) the game is played for money or anything else of value; and (b) the game is a game of chance or of mixed chance and skill; and (c) the service is provided in the course of carrying on a business; and (d) the game is not played on a gaming machine located at an eligible gaming machine venue	the person to whom the winnings are paid or the prize is awarded
10	in the capacity of controller of an eligible gaming machine venue, paying out winnings, or awarding a prize, in respect of a game, where: (a) the game is played on a gaming machine located at the venue; and (b) the winnings are paid out, or the prize is awarded, by the controller as agent of the owner or lessee of the gaming machine; and (c) the service is provided in the course of carrying on a business	the person to whom the winnings are paid or the prize is awarded

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Table 3—Gambling services

Item	Provision of a designated service	Customer of the designated service
11	in the capacity of account provider, opening an account, where: (a) the account provider is a person who provides a service covered by item 1, 2, 3, 4, 6, 7, 8 or 9; and (b) the purpose, or one of the purposes, of the account is to facilitate the provision of a service covered by item 1, 2, 3, 4, 6, 7, 8 or 9; and (c) the service is provided in the course of carrying on a business	the holder of the account
12	in the capacity of account provider for a new or existing account, allowing a person to become a signatory to the account, where: (a) the account provider is a person who provides a service covered by item 1, 2, 3, 4, 6, 7, 8 or 9; and (b) the purpose, or one of the purposes, of the account is to facilitate the provision of a service covered by item 1, 2, 3, 4, 6, 7, 8 or 9; and (c) the service is provided in the course of carrying on a business	the signatory

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Table 3—Gambling services		
Item	**Provision of a designated service**	**Customer of the designated service**
13	in the capacity of account provider for an account, allowing a transaction to be conducted in relation to the account, where: (a) the account provider is a person who provides a service covered by item 1, 2, 3, 4, 6, 7, 8 or 9; and (b) the purpose, or one of the purposes, of the account is to facilitate the provision of a service covered by item 1, 2, 3, 4, 6, 7, 8 or 9; and (c) the service is provided in the course of carrying on a business	both: (a) the holder of the account; and (b) each other signatory to the account
14	exchanging one currency (whether Australian or not) for another (whether Australian or not), where: (a) the exchange is provided by a person who provides a service covered by item 1, 2, 3, 4, 6, 7, 8 or 9; and (b) the service is provided in the course of carrying on a business	the person whose currency is exchanged

Table 4—Prescribed services

(5) Table 4 is as follows:

Table 4—Prescribed services		
Item	**Provision of a designated service**	**Customer of the designated service**
1	providing a service specified in the regulations	the person who, under the regulations, is taken to be the person to whom the service is provided

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Geographical link

(6) An item of a table in this section, other than item 32A of table 1, does not apply to the provision by a person of a service to a customer unless:

(a) the service is provided at or through a permanent establishment of the person in Australia; or

(b) both of the following subparagraphs apply:

(i) the person is a resident of Australia;

(ii) the service is provided at or through a permanent establishment of the person in a foreign country; or

(c) both of the following subparagraphs apply:

(i) the person is a subsidiary of a company that is a resident of Australia;

(ii) the service is provided at or through a permanent establishment of the person in a foreign country.

Note: For ***resident***, see section 14.

Amendment of items

(7) The regulations may amend an item of a table in this section.

7 Services provided jointly to 2 or more customers

(1) For the purposes of this Act, if a designated service is provided jointly to 2 or more customers, the service is taken to have been provided to each of those customers.

(2) For the purposes of this Act, if 2 or more persons are prospective joint customers in relation to a designated service, each of those persons is taken to be a prospective customer in relation to the designated service.

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

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8 Person-to-person electronic funds transfer instructions

Multiple-institution person-to-person electronic funds transfer instruction

(1) For the purposes of this Act, if:

(a) a person (the ***payer***) instructs a person (the ***ordering institution***) to transfer money controlled by the payer to a third person (the ***payee***) on the basis that the transferred money will be made available to the payee by:

(i) being credited to an account held by the payee with a fourth person (the ***beneficiary institution***); or

(ii) being paid to the payee by a fourth person (the ***beneficiary institution***); and

(b) either:

(i) the transfer is to be carried out wholly or partly by means of one or more electronic communications; or

(ii) the transfer instruction is to be passed on wholly or partly by means of one or more electronic communications; and

(c) the ordering institution is:

(i) an ADI; or

(ii) a bank; or

(iii) a building society; or

(iv) a credit union; or

(v) a person specified in the AML/CTF Rules; and

(d) the beneficiary institution is:

(i) an ADI; or

(ii) a bank; or

(iii) a building society; or

(iv) a credit union; or

(v) a person specified in the AML/CTF Rules;

then:

(e) the instruction is a ***multiple-institution person-to-person electronic funds transfer instruction***; and

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(f) if there are one or more persons interposed between the ordering institution and the beneficiary institution—disregard those interposed persons in working out the identities of the following:

(i) the payer;

(ii) the ordering institution;

(iii) the payee;

(iv) the beneficiary institution.

Note: ***Transfer*** has an extended meaning—see section 5.

Same-institution person-to-person electronic funds transfer instruction

(2) For the purposes of this Act, if:

(a) a person (the ***payer***) instructs a person (the ***ordering institution***) to transfer money controlled by the payer to a third person (the ***payee***) on the basis that the transferred money will be made available to the payee by:

(i) being credited to an account held by the payee with the ordering institution; or

(ii) being paid to the payee by the ordering institution; and

(b) the transfer is to be carried out wholly or partly by means of one or more electronic communications; and

(c) the ordering institution is:

(i) an ADI; or

(ii) a bank; or

(iii) a building society; or

(iv) a credit union; or

(v) a person specified in the AML/CTF Rules;

then:

(d) the instruction is a ***same-institution person-to-person electronic funds transfer instruction***; and

(e) for the purposes of the application of this Act to making the money available to the payee, the ordering institution may also be known as the ***beneficiary institution***.

Note: ***Transfer*** has an extended meaning—see section 5.

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9 Same-person electronic funds transfer instructions

Multiple-institution same-person electronic funds transfer instruction

(1) For the purposes of this Act, if:

(a) a person (the ***payer***) instructs a person (the ***ordering institution***) to transfer money controlled by the payer to a third person (the ***beneficiary institution***) on the basis that the transferred money will be made available to the payer by:

(i) being credited to an account held by the payer with the beneficiary institution; or

(ii) being paid to the payer by the beneficiary institution; and

(b) either:

(i) the transfer is to be carried out wholly or partly by means of one or more electronic communications; or

(ii) the transfer instruction is to be passed on wholly or partly by means of one or more electronic communications; and

(c) the ordering institution is:

(i) an ADI; or

(ii) a bank; or

(iii) a building society; or

(iv) a credit union; or

(v) a person specified in the AML/CTF Rules; and

(d) the beneficiary institution is:

(i) an ADI; or

(ii) a bank; or

(iii) a building society; or

(iv) a credit union; or

(v) a person specified in the AML/CTF Rules;

then:

(e) the instruction is a ***multiple-institution same-person electronic funds transfer instruction***; and

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(f) for the purposes of the application of this Act to making the money available to the payer, the payer may also be known as the ***payee***; and

(g) if there are one or more persons interposed between the ordering institution and the beneficiary institution—disregard those interposed persons in working out the identities of the following:

(i) the payer;

(ii) the ordering institution;

(iii) the beneficiary institution.

Note: ***Transfer*** has an extended meaning—see section 5.

Same-institution same-person electronic funds transfer instruction

(2) For the purposes of this Act, if:

(a) a person (the ***payer***) instructs a person (the ***ordering institution***) to make money controlled by the payer available to the payer by:

(i) being credited to an account held by the payer with the ordering institution; or

(ii) being paid to the payer by the ordering institution; and

(b) the transfer is to be carried out wholly or partly by means of one or more electronic communications; and

(c) the ordering institution is:

(i) an ADI; or

(ii) a bank; or

(iii) a building society; or

(iv) a credit union; or

(v) a person specified in the AML/CTF Rules;

then:

(d) the instruction is a ***same-institution same-person electronic funds transfer instruction***; and

(e) for the purposes of the application of this Act to making the money available to the payer:

(i) the payer may also be known as the ***payee***; and

(ii) the ordering institution may also be known as the ***beneficiary institution***.

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10 Designated remittance arrangements etc.

(1) A reference in this Act to a ***designated remittance arrangement*** is a reference to a remittance arrangement, where:

(a) at least one of the persons described in the following subparagraphs is a non-financier:

(i) a person who accepts an instruction from the transferor entity for the transfer of money or property under the remittance arrangement;

(ii) a person who makes money or property available, or arranges for it to be made available, to an ultimate transferee entity as a result of a transfer under the remittance arrangement; and

(c) the remittance arrangement satisfies such other conditions (if any) as are specified in the AML/CTF Rules.

Remittance arrangement

(2) A reference in this Act to a ***remittance arrangement*** is a reference to an arrangement that is for the transfer of money or property, and includes a reference to an arrangement that, under the regulations, is taken to be a remittance arrangement for the purposes of this Act.

Note: ***Transfer*** has an extended meaning—see section 5.

Transferor entity and ultimate transferee entity

(3) For the purposes of the application of this Act to a remittance arrangement:

(a) the ***transferor entity*** is the person from whom an instruction is accepted for the transfer of money or property under the arrangement; and

(b) the ***ultimate transferee entity*** is the person to whom money or property is ultimately transferred under the arrangement.

Note: ***Transfer*** has an extended meaning—see section 5.

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11 Control test

(1) For the purposes of this Act, the question whether an individual passes the control test in relation to a company is to be determined in the same manner in which that question is determined for the purposes of section 1207Q of the *Social Security Act 1991*.

(2) For the purposes of this Act, the question whether an individual passes the control test in relation to a trust is to be determined in the same manner in which that question is determined for the purposes of section 1207V of the *Social Security Act 1991*.

(3) For the purposes of subsections (1) and (2) of this section, assume that paragraph 1207C(1)(g) and subsections 1207C(2), (3) and (4) of the *Social Security Act 1991* had not been enacted.

Note: The control test is used in sections 14 (residency) and 15 (shell banks).

12 Owner-managed branches of ADIs

(1) For the purposes of this Act, if a person is a party to an exclusive arrangement with an ADI to offer designated services advertised or promoted under a single brand, trademark or business name, the person is an ***owner-managed branch*** of the ADI.

(2) For the purposes of this Act, if an owner-managed branch of an ADI proposes to provide, commences to provide, or provides, such a designated service, the designated service is taken to have been proposed to be provided, to have been commenced to have been provided, or to have been provided, as the case requires, by the ADI.

13 Eligible gaming machine venues

For the purposes of this Act, if:

(a) a person (the ***first person***) is in control of a particular venue; and

(b) one or more gaming machines are located at the venue; and

(c) the first person is neither the owner nor the lessee of the gaming machines; and

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(d) such other conditions (if any) as are specified in the AML/CTF Rules are satisfied;

then:

(e) the venue is an ***eligible gaming machine venue***; and

(f) the first person is the ***controller*** of the venue.

14 Residency

Individual

(1) For the purposes of this Act, an individual (including an individual in the capacity of trustee) is a resident of a particular country if, and only if, the individual is ordinarily resident in that country.

Note: See also subsections (7), (8) and (9).

Company

(2) For the purposes of this Act, a company (including a company in the capacity of trustee) is a resident of a particular country if, and only if:

(a) the company is incorporated in that country; or

(b) both:

(i) an individual passes the control test in relation to the company; and

(ii) the individual is a resident of that country.

Trust

(3) For the purposes of this Act, a trust is a resident of a particular country if, and only if:

(a) the trustee, or any of the trustees, is a resident of that country; or

(b) both:

(i) an individual passes the control test in relation to the trust; and

(ii) the individual is a resident of that country; or

(c) both:

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(i) a person benefits or is capable (whether by the exercise of a power of appointment or otherwise) of benefiting under the trust, either directly or through any interposed companies, partnerships or trusts; and

(ii) the person is a resident of that country.

Partnership

(4) For the purposes of this Act, a partnership is a resident of a particular country if, and only if, a partner is a resident of that country.

Corporation sole

(5) For the purposes of this Act, a corporation sole is a resident of a particular country if, and only if, the corporation sole was established in that country.

Body politic

(6) For the purposes of this Act, a body politic of, or of a part of, a particular country is a resident of that country.

When an individual is ordinarily resident in a particular country

(7) The AML/CTF Rules may specify matters that are to be taken into account in determining, for the purposes of this section, whether an individual (including an individual in the capacity of trustee) is ordinarily resident in a particular country.

(8) The AML/CTF Rules may provide that an individual (including an individual in the capacity of trustee) is taken, for the purposes of this section, to be ordinarily resident in a particular country if the individual satisfies one or more specified conditions.

(9) The AML/CTF Rules may provide that an individual (including an individual in the capacity of trustee) is taken, for the purposes of this section, not to be ordinarily resident in a particular country if the individual satisfies one or more specified conditions.

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Note: The expression ***resident*** is used in subsection 6(6) (designated services) and sections 100 (correspondent banking) and 102 (countermeasures).

15 Shell banks

(1) For the purposes of this Act, a ***shell bank*** is a corporation that:

(a) is incorporated in a foreign country; and

(b) is authorised to carry on banking business in its country of incorporation; and

(c) does not have a physical presence in its country of incorporation; and

(d) is not an affiliate of another corporation that:

(i) is incorporated in a particular country; and

(ii) is authorised to carry on banking business in its country of incorporation; and

(iii) has a physical presence in its country of incorporation.

When a corporation has a physical presence in a country

(2) For the purposes of determining what is a shell bank, a corporation has a ***physical presence*** in a country if, and only if:

(a) the corporation carries on banking business at a place in that country; and

(b) at least one full-time employee of the corporation performs banking-related duties at that place.

When a corporation is affiliated with another corporation

(3) For the purposes of determining what is a shell bank, a corporation is ***affiliated*** with another corporation if, and only if:

(a) the corporation is a subsidiary of the other corporation; or

(b) at least one individual passes the control test in relation to both corporations; or

(c) under the regulations, both corporations are taken to be under common control.

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16 Electronic communications

(1) Unless the contrary intention appears, in determining the application of a provision of this Act, it is immaterial whether any act or thing is or was done wholly or partly by means of one or more electronic communications.

(2) Subsection (1) is enacted for the avoidance of doubt.

17 Bearer negotiable instruments

(1) For the purposes of this Act, a ***bearer negotiable instrument*** is:

(a) a bill of exchange; or

(b) a cheque; or

(c) a promissory note; or

(d) a bearer bond; or

(e) a traveller's cheque; or

(f) a money order, postal order or similar order; or

(g) a negotiable instrument not covered by any of the above paragraphs.

Incomplete documents

(2) For the purposes of determining whether a document is covered by paragraph (1)(f) or (g), it is immaterial that the document is incomplete because the document does not specify:

(a) an amount to be paid; or

(b) a payee.

18 Translation of foreign currency to Australian currency

In determining, for the purposes of this Act, whether an amount of foreign currency (including an amount in which a document is denominated) is not less than an Australian dollar amount, the amount of foreign currency is to be translated to Australian currency at the exchange rate applicable at the relevant time.

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19 Translation of e-currency to Australian currency

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

20 Clubs and associations

For the purposes of this Act, the fact that a club or association provides services to its members does not prevent those services from being services provided in the course of carrying on a business.

21 Permanent establishment

(1) For the purposes of this Act, a ***permanent establishment*** of a person is a place at or through which the person carries on any activities or business, and includes a place where the person is carrying on activities or business through an agent.

Mobile services etc.

(2) For the purposes of this Act, if:

(a) a person; or

(b) an agent of a person acting on behalf of the person;

provides a service while:

(c) operating on a mobile basis; or

(d) travelling;

in a particular country, the person is taken to provide the service at or through a ***permanent establishment*** of the person in that country.

Electronic communications

(3) The regulations may provide that, if:

(a) a person provides a specified service wholly or partly by means of one or more electronic communications; and

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(b) the conditions set out in the regulations are taken to be satisfied in relation to a particular country;

then:

(c) the service is taken, for the purposes of this Act, to be provided at or through a permanent establishment of the person in that country; and

(d) the service is taken, for the purposes of this Act, not to be provided at or through a permanent establishment of the person in another country.

22 Officials of designated agencies etc.

(1) For the purposes of this Act, an ***official*** of a designated agency or a non-designated Commonwealth agency is a person who is:

(a) the chief executive officer (however described) of the agency; or

(b) a member or acting member of the agency; or

(c) a member of the staff of the agency; or

(d) an officer or employee of the agency; or

(e) an officer, employee or other individual under the control of the chief executive officer (however described) of the agency; or

(f) an individual who, under the regulations, is taken to be an official of the agency for the purposes of this Act;

and includes:

(g) in the case of the Australian Crime Commission—a person who is an examiner of the Australian Crime Commission; and

(h) in the case of a Commonwealth Royal Commission—a person who is:

(i) a legal practitioner (however described) appointed to assist the Commission; and

(ii) a person authorised under subsection (2); and

(i) in the case of a State/Territory Royal Commission—a person who is:

(i) a legal practitioner (however described) appointed to assist the Commission; and

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(ii) a person authorised under subsection (3).

Royal Commissions

(2) Either:

(a) the sole Commissioner of a Commonwealth Royal Commission; or

(b) a member of a Commonwealth Royal Commission;

may, by writing, authorise a person assisting the Commission to be an ***official*** of the Commission for the purposes of this Act.

(3) Either:

(a) the sole Commissioner of a State/Territory Royal Commission; or

(b) a member of a State/Territory Royal Commission;

may, by writing, authorise a person assisting the Commission to be an ***official*** of the Commission for the purposes of this Act.

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

23 Continuity of partnerships

For the purposes of this Act, a change in the composition of a partnership does not affect the continuity of the partnership.

24 Crown to be bound

(1) This Act binds the Crown in each of its capacities.

(2) This Act does not make the Crown liable to a pecuniary penalty or to be prosecuted for an offence.

(3) The protection in subsection (2) does not apply to an authority of the Crown.

25 Extension to external Territories

This Act extends to every external Territory.

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26 Extra-territorial application

(1) Unless the contrary intention appears, this Act extends to acts, omissions, matters and things outside Australia.

Note: Subsection 6(6) is an example of a contrary intention.

(2) Section 14.1 of the *Criminal Code* does not apply to an offence against this Act.

Part 2—Identification procedures etc.

Division 1—Introduction

27 Simplified outline

The following is a simplified outline of this Part:

- A reporting entity must carry out a procedure to verify a customer's identity before providing a designated service to the customer. However, in special cases, the procedure may be carried out after the provision of the designated service.
- Certain pre-commencement customers are subject to modified identification procedures.
- Certain low-risk services are subject to modified identification procedures.
- A reporting entity must carry out ongoing customer due diligence.

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Division 2—Identification procedures for certain pre-commencement customers

28 Identification procedures for certain pre-commencement customers

Scope

(1) This section applies to the provision by a reporting entity of a designated service (the ***post-commencement designated service)*** to a customer if, at a time before the commencement of this section, the reporting entity commenced to provide a designated service to the customer.

Exemption

(2) Sections 32 and 34 do not apply to the provision by the reporting entity of the post-commencement designated service to the customer.

Note: For special rules about verification of identity etc., see section 29.

Interpretation

(3) For the purposes of this section, assume that Part 1 had been in force at all material times before the commencement of this section.

29 Verification of identity of pre-commencement customer etc.

Scope

(1) This section applies to a reporting entity if:

(a) at a time before the commencement of this section, the reporting entity commenced to provide a designated service to a customer; and

(b) after the commencement of this section, a suspicious matter reporting obligation arises for the reporting entity in relation to the customer.

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Note 1: For ***suspicious matter reporting obligation***, see section 41.

Note 2: For tipping-off offences, see section 123.

Requirement

(2) The reporting entity must:
  (a) take such action as is specified in the AML/CTF Rules; and
  (b) do so within the time limit allowed under the AML/CTF Rules.

Civil penalty

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

Interpretation

(4) For the purposes of this section, assume that Part 1 had been in force at all material times before the commencement of this section.

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Division 3—Identification procedures for certain low-risk services

30 Identification procedures for certain low-risk services

Scope

(1) This section applies to the provision by a reporting entity of a designated service to a customer if, under the AML/CTF Rules, the service is taken to be a low-risk designated service.

(2) Sections 32 and 34 do not apply to the provision by the reporting entity of the designated service to the customer.

Note: For special rules about verification of identity etc., see section 31.

31 Verification of identity of low-risk service customer etc.

Scope

(1) This section applies to a reporting entity if:

(a) at a particular time (the ***relevant time***), the reporting entity commences to provide a designated service to a customer; and

(b) under the AML/CTF Rules, the service is taken to be a low-risk designated service; and

(c) at the relevant time or a later time, a suspicious matter reporting obligation arises for the reporting entity in relation to the customer.

Note 1: For ***suspicious matter reporting obligation***, see section 41.

Note 2: For tipping-off offences, see section 123.

Requirement

(2) The reporting entity must:

(a) take such action as is specified in the AML/CTF Rules; and

(b) do so within the time limit allowed under the AML/CTF Rules.

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Civil penalty

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

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Division 4—Identification procedures etc.

32 Carrying out the applicable customer identification procedure before the commencement of the provision of a designated service.

(1) A reporting entity must not commence to provide a designated service to a customer if:

(a) there are no special circumstances that justify carrying out the applicable customer identification procedure in respect of the customer after the commencement of the provision of the service (see section 33); and

(b) the reporting entity has not previously carried out the applicable customer identification procedure in respect of the customer; and

(c) neither section 28 nor section 30 applies to the provision of the service.

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

Note 2: See also section 38 (when applicable customer identification procedure deemed to be carried out by a reporting entity).

Civil penalty

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

33 Special circumstances that justify carrying out the applicable customer identification procedure after the commencement of the provision of a designated service

For the purposes of this Act, if a reporting entity commences to provide a designated service to a customer, there are taken to be special circumstances that justify the carrying out of the applicable customer identification procedure in respect of the customer after the commencement of the provision of the service if, and only if:

(a) the service is specified in the AML/CTF Rules; and

(b) such other conditions (if any) as are set out in the AML/CTF Rules are satisfied.

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Note: For specification by class, see subsection 13(3) of the *Legislative Instruments Act 2003*.

34 Carrying out the applicable customer identification procedure after the commencement of the provision of a designated service etc.

(1) If:

(a) a reporting entity has commenced to provide a designated service to a customer; and

(b) when the reporting entity commenced to provide the designated service to the customer, there were special circumstances that justified the carrying out of the applicable customer identification procedure in respect of the customer after the commencement of the provision of the service (see section 33); and

(c) the reporting entity has not previously carried out the applicable customer identification procedure in respect of the customer; and

(d) the reporting entity has not carried out the applicable customer identification procedure in respect of the customer within whichever of the following periods is applicable:

(i) if the designated service is specified in the AML/CTF Rules—the period ascertained in accordance with the AML/CTF Rules; or

(ii) in any other case—the period of 5 business days after the day on which the reporting entity commenced to provide the service; and

(e) neither section 28 nor section 30 applies to the provision of the service;

then, after the end of the period referred to in whichever of subparagraphs (d)(i) or (ii) is applicable, the reporting entity must not continue to provide, and must not commence to provide, any designated services to the customer until the reporting entity carries out the applicable customer identification procedure in respect of the customer.

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

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Note 2: See also section 38 (when applicable customer identification procedure deemed to be carried out by a reporting entity).

(2) Subsection (1) does not apply if:

(a) under the AML/CTF Rules, the reporting entity is not required to carry out the applicable customer identification procedure in respect of the customer; and

(b) the reporting entity takes such action as is specified in the AML/CTF Rules.

Civil penalty

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

Periods

(4) A period ascertained in accordance with AML/CTF Rules made for the purposes of subparagraph (1)(d)(i):

(a) must commence at the time when the reporting entity commences to provide the designated service concerned; and

(b) may be expressed to end on the occurrence of a specified event.

(5) Paragraph (4)(b) does not limit subparagraph (1)(d)(i).

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Division 5—Verification of identity etc.

35 Verification of identity of customer etc.

Scope

(1) This section applies to a reporting entity if:

(a) at a particular time, the reporting entity has carried out, or has purported to carry out, the applicable customer identification procedure in respect of a particular customer to whom the reporting entity provided, or proposed to provide, a designated service; and

(b) at a later time, any of the following subparagraphs applies:

(i) an event prescribed by the AML/CTF Rules happens;

(ii) a circumstance specified in the AML/CTF Rules comes into existence;

(iii) a period ascertained in accordance with the AML/CTF Rules ends.

Note: See also section 38 (when applicable customer identification procedure deemed to be carried out by a reporting entity).

Requirement

(2) The reporting entity must:

(a) take such action as is specified in the AML/CTF Rules; and

(b) do so within the time limit allowed under the AML/CTF Rules.

Civil penalty

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

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Division 5A—Use and disclosure of personal information for the purposes of verifying an individual's identity

35A Reporting entities may disclose certain personal information to credit reporting bodies for identity verification purposes

(1) A reporting entity may, to assist in verifying the identity of an individual for the purposes of this Act, the regulations or the AML/CTF Rules:

(a) disclose any or all of the following personal information to a credit reporting body for the purposes of making a request referred to in paragraph (b):

(i) the individual's name;

(ii) the individual's residential address;

(iii) the individual's date of birth; and

(b) request the credit reporting body to provide an assessment of whether the personal information so disclosed matches (in whole or part) personal information held by the credit reporting body.

(2) A reporting entity must not make a verification request in relation to an individual unless, before making the request:

(a) the individual was given information about:

(i) the reasons for making the request; and

(ii) the personal information about the individual that may be disclosed to the credit reporting body; and

(iii) the fact that the reporting entity may request the credit reporting body to provide an assessment of whether the personal information matches (in whole or part) personal information held by the credit reporting body; and

(iv) the fact that the credit reporting body may prepare and provide to the reporting entity such an assessment; and

(v) the fact that the credit reporting body may use the personal information about the individual, and personal

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information held by the body that is the names, residential addresses and dates of birth of other individuals, for the purpose of preparing such an assessment; and

(b) the individual expressly agreed to the making of the request and the disclosure of the personal information; and

(c) an alternative means of verifying the identity of the individual was made available to the individual.

(3) A disclosure of personal information under paragraph (1)(a) is taken to be authorised by this Act for the purposes of paragraph 6.2(b) of Australian Privacy Principle 6.

35B Credit reporting bodies may use and disclose certain personal information for identity verification purposes

(1) A credit reporting body that receives a verification request from a reporting entity in relation to an individual may:

(a) prepare and provide to the reporting entity an assessment in accordance with this section of whether any or all of the following personal information matches (in whole or part) personal information held by the credit reporting body:

(i) the individual's name;

(ii) the individual's residential address;

(iii) the individual's date of birth; and

(b) use the personal information about the individual, and personal information held by the credit reporting body that is the names, residential addresses and dates of birth of other individuals, for the purpose of preparing the assessment.

(2) An assessment provided under subsection (1) to a reporting entity:

(a) must be an overall assessment of the extent of the match between the personal information disclosed by the reporting entity and personal information held by the credit reporting body; and

(b) must not include separate assessments of the match between particular categories of that personal information.

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(3) To the extent that providing an assessment in relation to an individual involves a disclosure of personal information held by the credit reporting body to a person, body or agency other than the individual, the disclosure is taken to be authorised by this Act for the purposes of paragraph 20E(3)(e) of the *Privacy Act 1988*.

35C Reporting entities to notify inability to verify identity

(1) This section applies if:
  (a) a reporting entity makes a verification request in relation to an individual; and
  (b) an assessment is provided in relation to the individual; and
  (c) the reporting entity is unable to verify the identity of the individual, having regard to the assessment.

(2) The reporting entity must give a written notice to the individual:
  (a) stating that the reporting entity is unable to verify the identity of the individual having regard to the assessment; and
  (b) specifying the name of the credit reporting body that provided the assessment; and
  (c) offering the individual an alternative means of verifying the identity of the individual.

35D Verification information not to be collected or held by a credit reporting body

Subject to section 35E, a credit reporting body must not collect or hold personal information about an individual that relates to a verification request or an assessment in relation to the individual.

35E Retention of verification information—credit reporting bodies

(1) A credit reporting body that receives a verification request in relation to an individual must retain the following information for 7 years after the request was received:
  (a) the name of the reporting entity that made the request;
  (b) the date on which the request was made;

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(c) the personal information about the individual that was provided by the reporting entity to the credit reporting body;
(d) the date on which the credit reporting body provided an assessment (if any) in relation to the individual;
(e) such other information about the verification request as is specified in the AML/CTF Rules.

(2) A credit reporting body that retains information under subsection (1) must delete the information at the end of the 7 year period referred to in that subsection.

Civil penalty

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

35F Retention of verification information—reporting entities

(1) A reporting entity that makes a verification request in relation to an individual must make a record of the following;
(a) the name of the credit reporting body to which the request was made;
(b) the personal information about the individual that was provided by the reporting entity to the credit reporting body;
(c) the assessment (if any) provided by the credit reporting body in relation to the individual;
(d) such other information about the verification request as is specified in the AML/CTF Rules.

(2) The reporting entity must retain the record, or a copy of the record, until the end of the first 7 year period:
(a) that began at a time after the verification request was made; and
(b) throughout the whole of which the reporting entity did not provide any designated services to the individual.

(3) A reporting entity that retains a record, or a copy of a record, under subsection (2) must delete the record at the end of the 7 year period referred to in that subsection.

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Civil penalty

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

Designated business groups

(5) If:
  (a) a reporting entity is part of a designated business group; and
  (b) such other conditions as are specified in the AML/CTF Rules are satisfied;

the obligation imposed on the reporting entity by subsection (2) or (3) may be discharged by any other member of the group.

35G Access to verification information

A credit reporting body or a reporting entity in possession or control of personal information, or other information of a kind referred to in subsection 35E(1), that relates to a verification request or an assessment in relation to an individual must take reasonable steps to ensure that the individual can obtain access to the information.

35H Unauthorised access to verification information—offence

(1) A person commits an offence if:
  (a) the person obtains access to information; and
  (b) the information is personal information that relates to a verification request or an assessment in relation to an individual.

Penalty: 300 penalty units.

(2) Subsection (1) does not apply if the access is obtained in accordance with, or as otherwise authorised by, this Act or any other law.

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

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35J Obtaining access to verification information by false pretences—offence

A person commits an offence if:

(a) the person obtains access to information; and

(b) the information is personal information that relates to a verification request or an assessment in relation to an individual; and

(c) the information is obtained by false pretence.

Penalty: 300 penalty units.

35K Unauthorised use or disclosure of verification information—offence

(1) A person commits an offence if:

(a) the person uses or discloses information; and

(b) the information is personal information that relates to a verification request or an assessment in relation to an individual.

Penalty: 300 penalty units.

(2) Subsection (1) does not apply if the use or disclosure is in accordance with, or as otherwise authorised by, this Act or any other law.

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

35L Breach of requirement is an interference with privacy

A breach of a requirement of this Division in relation to an individual constitutes an act or practice involving an interference with the privacy of the individual for the purposes of section 13 of the *Privacy Act 1988*.

Note: The act or practice may be the subject of a complaint under section 36 of that Act.

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Division 6—Ongoing customer due diligence

36 Ongoing customer due diligence

(1) A reporting entity must:

(a) monitor the reporting entity's customers in relation to the provision by the reporting entity of designated services at or through a permanent establishment of the reporting entity in Australia, with a view to:

(i) identifying; and

(ii) mitigating; and

(iii) managing;

the risk the reporting entity may reasonably face that the provision by the reporting entity of a designated service at or through a permanent establishment of the reporting entity in Australia might (whether inadvertently or otherwise) involve or facilitate:

(iv) money laundering; or

(v) financing of terrorism; and

(b) do so in accordance with the AML/CTF Rules.

Civil penalty

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

Exemption

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

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

Designated business groups

(4) If a reporting entity is a member of a designated business group, the obligation imposed on the reporting entity by subsection (1) may be discharged by any other member of the group.

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Registered remittance affiliates

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

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Division 7—General provisions

37 Applicable customer identification procedures may be carried out by an agent of a reporting entity

(1) The principles of agency apply in relation to the carrying out by a reporting entity of an applicable customer identification procedure or an identity verification procedure.

(2) For example, a reporting entity may authorise another person to be its agent for the purposes of carrying out applicable customer identification procedures or identity verification procedures on the reporting entity's behalf.

(3) To avoid doubt, if a reporting entity provides a designated service to a customer through an agent of the reporting entity, the reporting entity may authorise:

(a) that agent; or

(b) any other person;

to be its agent for the purposes of carrying out the applicable customer identification procedure or an identity verification procedure in respect of the customer on the reporting entity's behalf.

(4) This section does not otherwise limit the operation of the principles of agency for the purposes of this Act.

38 Applicable customer identification procedures deemed to be carried out by a reporting entity

If:

(a) a reporting entity carried out the applicable customer identification procedure in respect of a particular customer to whom the reporting entity provided, or proposed to provide, a designated service; and

(b) the applicable customer identification procedure was carried out in such circumstances as are specified in the AML/CTF Rules; and

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(c) the customer is or becomes a customer to whom another reporting entity provides, or proposes to provide, a designated service; and

(d) such other conditions set out in the AML/CTF Rules are satisfied;

this Act (other than Part 10) has effect as if the applicable customer identification procedure had also been carried out in respect of the customer by the other reporting entity.

39 General exemptions

(1) This Part does not apply to a designated service that is of a kind specified in the AML/CTF Rules.

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

(3) This Part does not apply to a designated service that is provided in circumstances specified in the AML/CTF Rules.

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

(5) This Part does not apply to a designated service that is provided by a reporting entity at or through a permanent establishment of the entity in a foreign country.

(6) This Part (other than Division 6) does not apply to a designated service covered by item 40, 42 or 44 of table 1 in section 6.

(7) This Part does not apply to a designated service covered by item 54 of table 1 in section 6 if the service relates to arrangements for a person to receive a designated service covered by item 40, 42 or 44 of that table.

Note 1: Item 40 of table 1 in section 6 deals with accepting payment of the purchase price for a new pension or annuity.

Note 2: Item 42 of table 1 in section 6 deals with accepting a superannuation contribution, roll-over or transfer.

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Note 3: Item 44 of table 1 in section 6 deals with accepting an RSA contribution, roll-over or transfer.

Note 4: Item 54 of table 1 in section 6 covers a holder of an Australian financial services licence who arranges for a person to receive a designated service.

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Part 3—Reporting obligations

Division 1—Introduction

40 Simplified outline

The following is a simplified outline of this Part:

- A reporting entity must give the AUSTRAC CEO reports about suspicious matters.
- If a reporting entity provides a designated service that involves a threshold transaction, the reporting entity must give the AUSTRAC CEO a report about the transaction.
- If a person sends or receives an international funds transfer instruction, the person must give the AUSTRAC CEO a report about the instruction.
- A reporting entity may be required to give AML/CTF compliance reports to the AUSTRAC CEO.

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Division 2—Suspicious matters

41 Reports of suspicious matters

Suspicious matter reporting obligation

(1) A suspicious matter reporting obligation arises for a reporting entity in relation to a person (the ***first person***) if, at a particular time (the ***relevant time***):

(a) the reporting entity commences to provide, or proposes to provide, a designated service to the first person; or

(b) both:

(i) the first person requests the reporting entity to provide a designated service to the first person; and

(ii) the designated service is of a kind ordinarily provided by the reporting entity; or

(c) both:

(i) the first person inquires of the reporting entity whether the reporting entity would be willing or prepared to provide a designated service to the first person; and

(ii) the designated service is of a kind ordinarily provided by the reporting entity;

and any of the following conditions is satisfied:

(d) at the relevant time or a later time, the reporting entity suspects on reasonable grounds that the first person is not the person the first person claims to be;

(e) at the relevant time or a later time, the reporting entity suspects on reasonable grounds that an agent of the first person who deals with the reporting entity in relation to the provision or prospective provision of the designated service is not the person the agent claims to be;

(f) at the relevant time or a later time, the reporting entity suspects on reasonable grounds that information that the reporting entity has concerning the provision, or prospective provision, of the service:

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(i) may be relevant to investigation of, or prosecution of a person for, an evasion, or an attempted evasion, of a taxation law; or

(ii) may be relevant to investigation of, or prosecution of a person for, an evasion, or an attempted evasion, of a law of a State or Territory that deals with taxation; or

(iii) may be relevant to investigation of, or prosecution of a person for, an offence against a law of the Commonwealth or of a State or Territory; or

(iv) may be of assistance in the enforcement of the *Proceeds of Crime Act 2002* or regulations under that Act; or

(v) may be of assistance in the enforcement of a law of a State or Territory that corresponds to the *Proceeds of Crime Act 2002* or regulations under that Act;

(g) at the relevant time or a later time, the reporting entity suspects on reasonable grounds that the provision, or prospective provision, of the service is preparatory to the commission of an offence covered by paragraph (a), (b) or (c) of the definition of ***financing of terrorism*** in section 5;

(h) at the relevant time or a later time, the reporting entity suspects on reasonable grounds that information that the reporting entity has concerning the provision, or prospective provision, of the service may be relevant to the investigation of, or prosecution of a person for, an offence covered by paragraph (a), (b) or (c) of the definition of ***financing of terrorism*** in section 5;

(i) at the relevant time or a later time, the reporting entity suspects on reasonable grounds that the provision, or prospective provision, of the service is preparatory to the commission of an offence covered by paragraph (a) or (b) of the definition of ***money laundering*** in section 5;

(j) at the relevant time or a later time, the reporting entity suspects on reasonable grounds that information that the reporting entity has concerning the provision, or prospective provision, of the service may be relevant to the investigation of, or prosecution of a person for, an offence covered by paragraph (a) or (b) of the definition of ***money laundering*** in section 5.

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Report

(2) If a suspicious matter reporting obligation arises for a reporting entity in relation to a person, the reporting entity must give the AUSTRAC CEO a report about the matter within:

(a) if paragraph (1)(d), (e), (f), (i) or (j) applies—3 business days after the day on which the reporting entity forms the relevant suspicion; or

(b) if paragraph (1)(g) or (h) applies—24 hours after the time when the reporting entity forms the relevant suspicion.

(3) A report under subsection (2) must:

(a) be in the approved form; and

(b) contain such information relating to the matter as is specified in the AML/CTF Rules; and

(c) contain a statement of the grounds on which the reporting entity holds the relevant suspicion.

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

Note 2: Section 49 deals with the provision of further information, and the production of documents, by the reporting entity.

Civil penalty

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

Reasonable grounds for suspicion

(5) The AML/CTF Rules may specify matters that are to be taken into account in determining whether there are reasonable grounds for a reporting entity to form a suspicion of a kind mentioned in paragraph (1)(d), (e), (f), (g), (h), (i) or (j).

Note: For specification by class, see subsection 13(3) of the *Legislative Instruments Act 2003*.

42 Exemptions

(1) This Division does not apply to a designated service that is of a kind specified in the AML/CTF Rules.

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(2) The AML/CTF Rules may provide that a specified provision of this Division does not apply to a designated service that is of a kind specified in the AML/CTF Rules.

(3) This Division does not apply to a designated service that is provided in circumstances specified in the AML/CTF Rules.

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

(5) This Division does not apply to a designated service that is provided by a reporting entity at or through a permanent establishment of the entity in a foreign country, other than a service covered by item 32A of table 1 in section 6.

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Division 3—Threshold transactions

43 Reports of threshold transactions

Scope

(1) This section applies to a reporting entity if:
  (a) the reporting entity commences to provide, or provides, a designated service to a customer; and
  (b) the provision of the service involves a threshold transaction.

Report

(2) The reporting entity must, within 10 business days after the day on which the transaction takes place, give the AUSTRAC CEO a report of the transaction.

(3) A report under subsection (2) must:
  (a) be in the approved form; and
  (b) contain such information relating to the transaction as is specified in the AML/CTF Rules.

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

Note 2: Section 49 deals with the provision of further information, and the production of documents, by the reporting entity.

Civil penalty

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

44 Exemptions

(1) This Division does not apply to a designated service that is of a kind specified in the AML/CTF Rules.

(2) The AML/CTF Rules may provide that a specified provision of this Division does not apply to a designated service that is of a kind specified in the AML/CTF Rules.

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(3) This Division does not apply to a designated service that is provided in circumstances specified in the AML/CTF Rules.

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

(5) This Division does not apply to a designated service that is provided by a reporting entity at or through a permanent establishment of the entity in a foreign country, other than a service covered by item 32A of table 1 in section 6.

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

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

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Division 4—International funds transfer instructions

45 Reports of international funds transfer instructions

Scope

(1) This section applies to a person if:

(a) the person is:

(i) the sender of an international funds transfer instruction transmitted out of Australia; or

(ii) the recipient of an international funds transfer instruction transmitted into Australia; and

(b) if the regulations provide that this paragraph is applicable—the total amount or value that is to be, or is, transferred is not less than the amount specified in the regulations; and

(c) such other conditions (if any) as are set out in the AML/CTF Rules are satisfied.

Note: ***International funds transfer instruction*** is defined by section 46.

Report

(2) The person must, within 10 business days after the day on which the instruction was sent or received by the person, give the AUSTRAC CEO a report about the instruction.

(3) A report under subsection (2) must:

(a) be in the approved form; and

(b) contain such information relating to the matter as is specified in the AML/CTF Rules.

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

Civil penalty

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

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Funds transfer chain etc.

(5) For the purposes of this section, it is immaterial whether the person sent or received the international funds transfer instruction in the capacity of interposed institution in a funds transfer chain.

Note: For ***funds transfer chain***, see subsection 64(2).

Exemptions

(6) This section does not apply to an international funds transfer instruction that is of a kind specified in the AML/CTF Rules.

(7) This section does not apply to an international funds transfer instruction that is sent or received in circumstances specified in the AML/CTF Rules.

46 International funds transfer instruction

For the purposes of this Act, the following table defines ***international funds transfer instruction***:

International funds transfer instruction

Item	Type of instruction	The instruction is an *international funds transfer instruction* if ...
1	electronic funds transfer instruction	(a) the instruction is accepted at or through a permanent establishment of the ordering institution in Australia; and (b) the transferred money is to be, or is, made available to the payee at or through a permanent establishment of the beneficiary institution in a foreign country
2	electronic funds transfer instruction	(a) the instruction is accepted at or through a permanent establishment of the ordering institution in a foreign country; and (b) the transferred money is to be, or is, made available to the payee at

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International funds transfer instruction		
Item	**Type of instruction**	**The instruction is an *international funds transfer instruction* if ...**
		or through a permanent establishment of the beneficiary institution in Australia
3	instruction given by a transferor entity for the transfer of money or property under a designated remittance arrangement	(a) the instruction is accepted at or through a permanent establishment of a non-financier in Australia; and (b) the money or property is to be, or is, made available to the ultimate transferee entity at or through a permanent establishment of a person in a foreign country
4	instruction given by a transferor entity for the transfer of money or property under a designated remittance arrangement	(a) the instruction is accepted at or through a permanent establishment of a person in a foreign country; and (b) the money or property is to be, or is, made available to the ultimate transferee entity at or through a permanent establishment of a non-financier in Australia

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Division 5—AML/CTF compliance reports

47 AML/CTF compliance reports

Scope

(1) This section applies if the AML/CTF Rules provide that, for the purposes of this section:
   (a) a specified period is a reporting period; and
   (b) a specified period beginning at the end of a reporting period is the lodgment period for that reporting period.

A period specified under paragraph (a) or (b) may be a recurring period.

Report

(2) A reporting entity must, within the lodgment period for a reporting period, give the AUSTRAC CEO a report relating to the reporting entity's compliance with this Act, the regulations and the AML/CTF Rules during the reporting period.

(3) A report under subsection (2) must:
   (a) be in the approved form; and
   (b) contain such information as is required by the approved form.

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

Civil penalty

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

Exemption

(5) This section does not apply to a reporting entity if all of the designated services provided by the reporting entity are covered by item 54 of table 1 in section 6.

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

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Designated business groups

(6) If a reporting entity is a member of a designated business group, the obligation imposed on the reporting entity by subsection (2) may be discharged by any other member of the group.

(7) If 2 or more reporting entities are members of a designated business group, reports under subsection (2) relating to those reporting entities may be set out in the same document.

Different reporting entities

(8) AML/CTF Rules made for the purposes of this section may make different provision with respect to different reporting entities. This does not limit subsection 33(3A) of the *Acts Interpretation Act 1901*.

48 Self-incrimination

(1) A person is not excused from giving a report under section 47 on the ground that the report might tend to incriminate the person or expose the person to a penalty.

(2) However:
  (a) the report given; or
  (b) giving the report;
  is not admissible in evidence against the person:
  (c) in civil proceedings other than:
    (i) proceedings under section 175 for a contravention of subsection 47(2); or
    (ii) proceedings under the *Proceeds of Crime Act 2002* that relate to this Act; or
  (d) in criminal proceedings other than:
    (i) proceedings for an offence against section 136 that relates to section 47; or
    (ii) proceedings for an offence against section 137.1 of the *Criminal Code* that relates to section 47 of this Act.

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Division 6—General provisions

49 Further information to be given to the AUSTRAC CEO etc.

(1) If a reporting entity communicates information to the AUSTRAC CEO under section 41, 43 or 45, then:

(a) the AUSTRAC CEO; or

(b) the Commissioner of the Australian Federal Police; or

(c) the Chief Executive Officer of the Australian Crime Commission; or

(d) the Commissioner of Taxation; or

(e) the Chief Executive Officer of Customs; or

(f) the Integrity Commissioner; or

(g) an investigating officer who is carrying out an investigation arising from, or relating to the matters mentioned in, the information;

may, by written notice given to the reporting entity or any other person, require the reporting entity or other person:

(h) to give such further information as is specified in the notice, within the period and in the manner specified in the notice, to the extent to which the reporting entity or other person has that information; or

(i) to produce, within the period and in the manner specified in the notice, such documents as are:

(i) specified in the notice; and

(ii) relevant to the matter to which the communication under section 41, 43 or 45 relates; and

(iii) in the possession or control of the reporting entity or other person.

(1A) A person (the ***issuer***) must not give a notice under subsection (1) to another person (the ***recipient***) unless the issuer reasonably believes that the recipient has knowledge of the information, or possession or control of the document, that is specified in the notice.

(1B) The period specified in the notice for giving the information or document must be at least 14 days after the notice is given unless:

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(a) the recipient is the reporting entity who communicated information to the AUSTRAC CEO under section 41, 43 or 45; or

(b) both of the following apply:

(i) the issuer considers that specifying a shorter period is necessary;

(ii) the shorter period specified is reasonable in the circumstances.

Compliance

(2) A person must comply with a notice under subsection (1).

Civil penalty

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

49A AML/CTF Rules may make provision in relation to reports by registered remittance affiliates

(1) The AML/CTF Rules may make provision for and in relation to reports required by this Part to be given by a reporting entity that is a registered remittance affiliate of a registered remittance network provider.

(2) Without limiting subsection (1), the AML/CTF Rules may provide:

(a) that an obligation imposed by this Part upon a registered remittance affiliate of a registered remittance network provider to provide a report is taken instead, or in addition, to be an obligation imposed upon the registered remittance network provider; and

(b) that an obligation imposed by this Part on a registered remittance affiliate of a registered remittance network provider may be discharged by the registered remittance network provider; and

(c) that a report required to be provided as mentioned in paragraph (a) must, or may, be given by the registered remittance network provider in the manner specified in the AML/CTF Rules.

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50 Request to obtain information about the identity of holders of foreign credit cards and foreign debit cards

Scope

(1) This section applies to a reporting entity if:

(a) under section 49, the AUSTRAC CEO or the Commissioner of Taxation has required the reporting entity to give information about the identity of:

(i) the holder of, or a signatory to, a particular credit card account; or

(ii) the holder of, or a signatory to, a particular debit card account; and

(b) the account relates to a credit card, or a debit card, that was issued by a person (the ***card issuer***) outside Australia; and

(c) the reporting entity does not have that information.

Direction to reporting entity

(2) The AUSTRAC CEO or the Commissioner of Taxation may, by written notice given to the reporting entity, direct the reporting entity to give the card issuer a request, in a form specified in the notice, to give the information to the reporting entity.

(3) The reporting entity must comply with the direction within 10 business days after the day on which the direction is given.

Report by reporting entity

(4) If the reporting entity gives the card issuer a request under subsection (2) that was directed by the AUSTRAC CEO, the reporting entity must, within:

(a) 20 business days after the day on which the subsection (2) direction was given; or

(b) if the AUSTRAC CEO, by written notice given to the reporting entity, allows a longer period—that longer period;

give the AUSTRAC CEO a report about the card issuer's response, or lack of response, to the request.

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(5) If the reporting entity gives the card issuer a request under subsection (2) that was directed by the Commissioner of Taxation, the reporting entity must, within:

(a) 20 business days after the day on which the subsection (2) direction was given; or

(b) if the Commissioner of Taxation, by written notice given to the reporting entity, allows a longer period—that longer period;

give the Commissioner of Taxation a report about the card issuer's response, or lack of response, to the request.

(6) A report under subsection (4) or (5) must:

(a) be in the approved form; and

(b) in a case where the card issuer has given the information to the reporting entity—contain the information; and

(c) contain such other information (if any) relating to the matter as is required by the approved form.

Note: For additional rules about reports given to the AUSTRAC CEO, see section 244.

Civil penalty

(7) Subsections (3), (4) and (5) are civil penalty provisions.

51 Division 400 and Chapter 5 of the *Criminal Code*

If a person, or an officer, employee or agent of a person, communicates or gives information under section 41, 43, 45 or 49, the person, officer, employee or agent is taken, for the purposes of Division 400 and Chapter 5 of the *Criminal Code*, not to have been in possession of that information at any time.

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Part 3A—Reporting Entities Roll

51A Simplified outline

The following is a simplified outline of this Part:

- Providers of designated services must be entered on the Reporting Entities Roll.

51B Reporting entities must enrol

(1) If a person's name is not entered on the Reporting Entities Roll, the person must:

(a) if the person provided a designated service during the period of 28 days before the commencement of this section—apply in writing to the AUSTRAC CEO under subsection 51E(1) within 28 days after the commencement of this section; or

(b) if the person commences to provide a designated service after the commencement of this section—apply in writing to the AUSTRAC CEO under subsection 51E(1) within 28 days after commencing to provide the designated service.

(2) Subsection (1) does not apply if the person:

(a) has applied under subsection 51E(1) in relation to the provision of another designated service; and

(b) has not since requested under section 51G that the AUSTRAC CEO remove the person's name and enrolment details from the Reporting Entities Roll.

Civil penalty

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

51C Reporting Entities Roll

(1) The AUSTRAC CEO must maintain a roll for the purposes of this Part, to be known as the Reporting Entities Roll.

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(2) The AUSTRAC CEO may maintain the Reporting Entities Roll by electronic means.

(3) The Reporting Entities Roll is not a legislative instrument.

(4) The AML/CTF Rules may make provision for and in relation to either or both of the following:
   (a) the correction of entries in the Reporting Entities Roll;
   (b) any other matter relating to the administration or operation of the Reporting Entities Roll, including the removal of names and enrolment details from the Reporting Entities Roll.

51D Enrolment

If a person applies to the AUSTRAC CEO under subsection 51E(1) and the person's name is not already entered on the Reporting Entities Roll, the AUSTRAC CEO must enter on the Reporting Entities Roll:
   (a) the person's name; and
   (b) the person's enrolment details.

51E Applications for enrolment

(1) A person may apply in writing to the AUSTRAC CEO for enrolment as a reporting entity.

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

51F Enrolled persons to advise of change in enrolment details

(1) A person who is enrolled under this Part must advise the AUSTRAC CEO, in accordance with subsection (2), of any change in the person's enrolment details that is of a kind specified in the AML/CTF Rules.

(2) A person who is required by subsection (1) to advise the AUSTRAC CEO of a change in enrolment details must do so:

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(a) within 14 days of the change arising; and
(b) in accordance with the approved form, or in a manner specified in the AML/CTF Rules.

Civil penalty

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

51G Removal of entries from the Reporting Entities Roll

(1) A person may, in writing, request the AUSTRAC CEO to remove the person's name and enrolment details from the Reporting Entities Roll.

(2) The request must:
(a) be in the approved form; and
(b) contain the information required by the AML/CTF Rules.

(3) The AUSTRAC CEO must consider the request and remove the person's name and enrolment details from the Reporting Entities Roll if the AUSTRAC CEO is satisfied that it is appropriate to do so, having regard to:
(a) whether the person has ceased to provide designated services; and
(b) the likelihood of the person providing a designated service in the financial year beginning after the request is given; and
(c) any outstanding obligations the person has (if any) to provide a report under any of the following provisions:
(i) section 43 (threshold transaction reports);
(ii) section 45 (international funds transfer instruction reports);
(iii) section 47 (AML/CTF compliance reports).

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Part 4—Reports about cross-border movements of physical currency and bearer negotiable instruments

Division 1—Introduction

52 Simplified outline

The following is a simplified outline of this Part:

- Cross-border movements of physical currency must be reported to the AUSTRAC CEO, a customs officer or a police officer if the total value moved is above a threshold.
- If a bearer negotiable instrument is produced to a police officer or a customs officer by a person leaving or arriving in Australia, the officer may require the person to give a report about the instrument to the AUSTRAC CEO, a customs officer or a police officer.

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Division 2—Reports about physical currency

53 Reports about movements of physical currency into or out of Australia

Offence

(1) A person commits an offence if:
  (a) either:
    (i) the person moves physical currency into Australia; or
    (ii) the person moves physical currency out of Australia; and
  (b) the total amount of the physical currency is not less than $10,000; and
  (c) a report in respect of the movement has not been given in accordance with this section.

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

(2) Strict liability applies to paragraph (1)(c).

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

Civil penalty

(3) A person must not:
  (a) move physical currency into Australia; or
  (b) move physical currency out of Australia;
if:
  (c) the total amount of the physical currency is not less than $10,000; and
  (d) a report in respect of the movement has not been given in accordance with this section.

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

Commercial carriers

(5) Subsections (1) and (3) do not apply to a person if:

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(a) the person is a commercial passenger carrier; and
(b) the physical currency is in the possession of any of the carrier's passengers.

(6) Subsections (1) and (3) do not apply to a person if:
(a) the person is a commercial goods carrier; and
(b) the physical currency is carried on behalf of another person; and
(c) the other person has not disclosed to the carrier that the goods carried on behalf of the other person include physical currency.

(7) A person who wishes to rely on subsection (5) or (6) bears an evidential burden in relation to that matter.

Requirements for reports under this section

(8) A report under this section must:
(a) be in the approved form; and
(b) contain such information relating to the matter being reported as is 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 subsection 54(1).

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 Timing of reports about physical currency movements

Applicable timing rule

(1) A report under section 53 must be given:
(a) if the movement of the physical currency is to be effected by a person bringing the physical currency into Australia with the person—at the time worked out under subsection (2); or

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(b) if the movement of the physical currency is to be effected by a person taking the physical currency out of Australia with the person—at the time worked out under subsection (3); or

(c) if the physical currency is to be taken out of Australia by a person by consignment of the physical currency:

(i) through the post to a place outside Australia; or

(ii) to another person for carriage to a place outside Australia by that other person or by a third person;

at any time before the time when the physical currency is irrevocably committed by the first-mentioned person to the Australian Postal Corporation or to the other person, as the case may be; or

(d) in any other case—at any time before the movement of the physical currency takes place.

Inwards movements

(2) For the purposes of paragraph (1)(a), the applicable time is:

(a) if the person:

(i) moves the physical currency into Australia on an aircraft or ship; and

(ii) after disembarking, goes to the place at which customs officers examine baggage;

as soon as the person reaches that place; or

(b) in any other case—the first opportunity after arrival in Australia that the person has to give the report under section 53.

Outwards movements

(3) For the purposes of paragraph (1)(b), the applicable time is:

(a) if:

(i) the movement of the physical currency is to be effected on an aircraft or ship; and

(ii) the person, before embarking, goes to the place at which customs officers examine passports;

as soon as the person reaches that place; or

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(b) in any other case—as soon as the person reaches the customs officer who is to examine the person's passport in relation to the person leaving Australia or, if there is no such examination, the last opportunity before leaving Australia that the person has to give the report under section 53.

55 Reports about receipts of physical currency from outside Australia

Offence

(1) A person commits an offence if:
(a) the person receives physical currency moved to the person from outside Australia; and
(b) at the time of the receipt, the total amount of the physical currency is not less than $10,000; and
(c) a report in respect of the movement has not been made in accordance with section 53 before the movement; and
(d) a report in respect of the receipt is not given in accordance with this section before the end of the period of 5 business days beginning on the day of the receipt.

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

(2) Strict liability applies to paragraphs (1)(c) and (d).

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

Civil penalty

(3) A person must not receive physical currency moved to the person from outside Australia if:
(a) at the time of the receipt, the total amount of the physical currency is not less than $10,000; and
(b) a report in respect of the movement has not been made in accordance with section 53 before the movement; and
(c) a report in respect of the receipt is not given in accordance with this section before the end of the period of 5 business days beginning on the day of the receipt.

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

Requirements for reports under this section

(5) A report under this section must:
  (a) be in the approved form; and
  (b) contain such information relating to the matter being reported as is specified in the AML/CTF Rules; and
  (c) be given to the AUSTRAC CEO, a customs officer or a police officer.

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

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

56 Obligations of customs officers and police officers

If a report under section 53 or 55 is given to a customs officer or a police officer, the officer must, within 5 business days after the day of receipt of the report, forward the report to the AUSTRAC CEO.

57 Movements of physical currency out of Australia

(1) This section sets out the 2 situations in which a person ***moves*** physical currency out of Australia.

(2) For the purposes of this Act, a person ***moves*** physical currency out of Australia if the person takes or sends the physical currency out of Australia.

(3) For the purposes of this Act, if a person:
  (a) arranges to leave Australia on an aircraft or ship; and
  (b) for the purpose of leaving Australia, goes towards an aircraft or ship through an embarkation area; and
  (c) either:
    (i) takes physical currency into the embarkation area; or
    (ii) has physical currency in his or her baggage; and
  (d) does not give a report about the physical currency when at the place in the embarkation area at which customs officers examine passports;

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the person is taken to have ***moved*** the physical currency out of Australia.

58 Movements of physical currency into Australia

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

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Division 3—Reports about bearer negotiable instruments

59 Reports about movements of bearer negotiable instruments into or out of Australia

Reporting requirement

(1) If, under section 200:

(a) a person produces to a police officer or a customs officer one or more bearer negotiable instruments that the person has with him or her; or

(b) a police officer or a customs officer conducts an examination or search and finds one or more bearer negotiable instruments that a person has with him or her;

the officer may require the person to give the AUSTRAC CEO, a customs officer or a police officer a report about the bearer negotiable instruments immediately.

Requirements for reports under this section

(2) A report under subsection (1) must:

(a) be in the approved form; and

(b) contain such information relating to the matter being reported as is specified in the AML/CTF Rules.

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

Offence

(3) A person commits an offence if:

(a) the person is subject to a requirement under subsection (1); and

(b) the person engages in conduct; and

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

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

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Civil penalty

(4) If a person is subject to a requirement under subsection (1), the person must not engage in conduct that breaches the requirement.

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

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

60 Obligations of customs officers and police officers

If a report under section 59 is given to a customs officer or a police officer, the officer must, within 5 business days after the day of receipt of the report, forward the report to the AUSTRAC CEO.

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Division 4—Information about reporting obligations

61 Power to affix notices about reporting obligations

Scope

(1) This section applies to a written notice:
  (a) that relates to reporting obligations under this Part; and
  (b) the form and contents of which are specified in the AML/CTF Rules.

Power to affix notices

(2) A customs officer may affix, or arrange for another person to affix, one or more notices:
  (a) on any part of an aircraft or ship; or
  (b) in any other place specified in the AML/CTF Rules.

Offence

(3) A person commits an offence if:
  (a) a notice has been affixed under this section; and
  (b) the person engages in conduct; and
  (c) the person's conduct results in:
    (i) interference with the notice; or
    (ii) the removal of the notice; or
    (iii) defacement of the notice.

Penalty: 50 penalty units.

(4) Subsection (3) does not apply if the person's conduct is authorised by the AUSTRAC CEO or the Chief Executive Officer of Customs.

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

(5) An offence against subsection (3) is an offence of strict liability.

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

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Section 62

62 Notice about reporting obligations to be given to travellers to Australia

Scope

(1) This section applies to a written notice:
  (a) that relates to reporting obligations under this Part; and
  (b) the form and contents of which are specified in the AML/CTF Rules.

Notice to be given to travellers

(2) If an aircraft or ship leaves a place outside Australia to travel to a place in Australia without stopping at any other place outside Australia, the person in charge of the aircraft or ship must:
  (a) give a copy of the notice, or communicate the information contained in the notice in the manner prescribed by the AML/CTF Rules, to all persons travelling on the aircraft or ship (including members of the crew); or
  (b) cause a copy of the notice to be given, or cause to be communicated the information contained in the notice in the manner prescribed by the AML/CTF Rules, to all persons travelling on the aircraft or ship (including members of the crew).

Offence

(3) A person commits an offence if:
  (a) the person is subject to a requirement under subsection (2); and
  (b) the person engages in conduct; and
  (c) the person's conduct breaches the requirement.

Penalty: 50 penalty units.

(4) An offence against subsection (3) is an offence of strict liability.

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

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Part 5—Electronic funds transfer instructions

Division 1—Introduction

63 Simplified outline

The following is a simplified outline of this Part:

- Electronic funds transfer instructions must include certain information about the origin of the transferred money.

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Division 2—2 or more institutions involved in the transfer

64 Electronic funds transfer instructions—2 or more institutions involved in the transfer

Scope

(1) This section applies to:
  (a) a multiple-institution person-to-person electronic funds transfer instruction; or
  (b) a multiple-institution same-person electronic funds transfer instruction.

Note: For exemptions, see section 67.

Funds transfer chain

(2) For the purposes of this Act:
  (a) the following persons are taken to form a ***funds transfer chain***:
    (i) the ordering institution;
    (ii) each person (if any) interposed between the ordering institution and the beneficiary institution;
    (iii) the beneficiary institution; and
  (b) each person in the chain is to be known as an ***institution***.

Obligations of ordering institution

(3) If the transfer instruction is accepted by the ordering institution at or through a permanent establishment of the ordering institution in Australia, then, before the ordering institution:
  (a) passes on the transfer instruction; or
  (b) dispatches the transfer instruction; or
  (c) takes any other action to carry out the transfer instruction;

the ordering institution must obtain the complete payer information.

Note: For ***complete payer information***, see section 71.

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(4) If:

(a) the transfer instruction is accepted by the ordering institution at or through a permanent establishment of the ordering institution in Australia; and

(b) the AUSTRAC CEO, by written notice given to the ordering institution, requests the ordering institution to give the complete payer information to the AUSTRAC CEO;

the ordering institution must comply with the request within:

(c) if the request was given to the ordering institution within 6 months after the acceptance of the transfer instruction by the ordering institution—3 business days after the day on which the request was given; or

(d) otherwise—10 business days after the day on which the request was given.

Note: For ***complete payer information***, see section 71.

(5) If:

(a) the transfer instruction is accepted by the ordering institution at or through a permanent establishment of the ordering institution in Australia; and

(b) the beneficiary institution, by written notice given to the ordering institution, requests the ordering institution to give the complete payer information to the beneficiary institution;

the ordering institution must comply with the request within:

(c) if the request was given to the ordering institution within 6 months after the acceptance of the transfer instruction by the ordering institution—3 business days after the day on which the request was given; or

(d) otherwise—10 business days after the day on which the request was given.

Note: For ***complete payer information***, see section 71.

(6) If:

(a) the ordering institution is in the funds transfer chain; and

(b) the transfer instruction is accepted by the ordering institution at or through a permanent establishment of the ordering institution in Australia;

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then, before the ordering institution passes on the transfer instruction to another person in the chain, the ordering institution must ensure that the instruction includes the required transfer information.

Note: For ***required transfer information***, see section 70.

Obligations of interposed institutions in the funds transfer chain

(7) If:

(a) an institution is in the funds transfer chain; and

(b) either:

(i) the institution is an interposed institution and the transfer instruction is passed on to the institution at or through a permanent establishment of the institution in Australia; or

(ii) the institution is an interposed institution and the transfer instruction is to be passed on by the institution at or through a permanent establishment of the institution in Australia; and

(c) either:

(i) the transfer instruction is accepted by the ordering institution at or through a permanent establishment of the ordering institution in Australia; or

(ii) the making available by the beneficiary institution of the transferred money would take place at or through a permanent establishment of the beneficiary institution in Australia; and

(d) some or all of the required transfer information was passed on to the institution by another institution in the funds transfer chain;

then:

(e) if the transfer instruction was accepted by the ordering institution at or through a permanent establishment of the ordering institution in a foreign country—before passing on the transfer instruction to another institution in the chain, the interposed institution must ensure that the instruction includes the tracing information; or

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(f) in any other case—before passing on the transfer instruction to another institution in the chain, the interposed institution must ensure that the instruction includes so much of the required transfer information as was passed on to the interposed institution as mentioned in paragraph (d).

Note 1: For ***required transfer information***, see section 70.

Note 2: For ***tracing information***, see section 72.

Civil penalty

(8) Subsections (3), (4), (5), (6) and (7) are civil penalty provisions.

65 Request to include customer information in certain international electronic funds transfer instructions

Scope

(1) This section applies to:

(a) a multiple-institution person-to-person electronic funds transfer instruction; or

(b) a multiple-institution same-person electronic funds transfer instruction;

if:

(c) the instruction is accepted at or through a permanent establishment of the ordering institution in a foreign country; and

(d) the transferred money is to be, or is, made available to the payee at or through a permanent establishment of the beneficiary institution in Australia.

Note: For exemptions, see section 67.

Direction to beneficiary institution

(2) If:

(a) the beneficiary institution has received 2 or more electronic funds transfer instructions from a particular ordering institution; and

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(b) at least one of the electronic funds transfer instructions does not include the required transfer information; and

(c) the AUSTRAC CEO, by written notice given to the beneficiary institution, directs the beneficiary institution to give the ordering institution a request (in a form specified in the notice) to include required transfer information in all future electronic funds transfer instructions passed on by the ordering institution to the beneficiary institution;

the beneficiary institution must comply with the direction within 10 business days after the day on which the direction is given.

Report by beneficiary institution

(3) If the beneficiary institution gives the ordering institution a request under subsection (2), the beneficiary institution must, within:

(a) 20 business days after the day on which the subsection (2) direction was given; or

(b) if the AUSTRAC CEO, by written notice given to the beneficiary institution, allows a longer period—that longer period;

give the AUSTRAC CEO a report about the ordering institution's response, or lack of response, to the request.

(4) A report under subsection (3) must:

(a) be in the approved form; and

(b) contain such information relating to the matter as is required by the approved form.

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

Civil penalty

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

Powers of beneficiary institution

(6) If an electronic funds transfer instruction received by the beneficiary institution does not include the required transfer information, the beneficiary institution may, for the purpose set out in subsection (7), refuse to make the transferred money available to

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the payee until the required transfer information is passed on to the beneficiary institution.

(7) The purpose referred to in subsection (6) is to:

(a) identify; or

(b) mitigate; or

(c) manage;

the risk the beneficiary institution may reasonably face that the making available by the beneficiary institution of transferred money at or through a permanent establishment of the beneficiary institution in Australia might (whether inadvertently or otherwise) involve or facilitate:

(d) money laundering; or

(e) financing of terrorism.

Protection from liability

(8) An action, suit or proceeding (whether criminal or civil) does not lie against:

(a) the beneficiary institution; or

(b) an officer, employee or agent of the beneficiary institution acting in the course of his or her office, employment or agency;

in relation to anything done, or omitted to be done, in good faith by the beneficiary institution, officer, employee or agent in the exercise, or purported exercise, of the power conferred by subsection (6).

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Division 3—Only one institution involved in the transfer

66 Electronic funds transfer instructions—only one institution involved in the transfer

Scope

(1) This section applies to:

(a) a same-institution person-to-person electronic funds transfer instruction; or

(b) a same-institution same-person electronic funds transfer instruction if the instruction is to be carried out otherwise than by way of transferring money from an account held by the payer with the ordering institution in a particular country to another account held by the payer with the ordering institution in that country.

Note: For exemptions, see section 67.

Obligations of beneficiary institution

(2) If:

(a) the transfer instruction is accepted by the ordering institution at or through a permanent establishment of the ordering institution in Australia; or

(b) the making available by the beneficiary institution of the transferred money would take place at or through a permanent establishment of the beneficiary institution in Australia;

then, before the beneficiary institution makes the transferred money available to the payee, the beneficiary institution must obtain the complete payer information.

Note: For ***complete payer information***, see section 71.

(3) If:

(a) either:

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(i) the transfer instruction is accepted by the ordering institution at or through a permanent establishment of the ordering institution in Australia; or

(ii) the making available by the beneficiary institution of the transferred money would take place at or through a permanent establishment of the beneficiary institution in Australia; and

(b) the AUSTRAC CEO, by written notice given to the ordering institution, requests the institution to give the complete payer information to the AUSTRAC CEO;

the ordering institution must comply with the request within:

(c) if the request was given to the ordering institution within 6 months after the acceptance of the transfer instruction by the ordering institution—3 business days after the day on which the request was given; or

(d) otherwise—10 business days after the day on which the request was given.

Note: For ***complete payer information***, see section 71.

Civil penalty

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

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Division 4—General provisions

67 Exemptions

Approved third-party bill payment systems

(1) This Part does not apply to an instruction that arises from the use of an approved third-party bill payment system.

Debit cards and credit cards

(2) This Part does not apply to an instruction that arises from the use of a debit card or a credit card if:
  (a) the use does not involve obtaining a cash advance; and
  (b) the number of the card is included in the instruction; and
  (c) the card is not of a kind specified in the AML/CTF Rules; and
  (d) the use does not take place in circumstances of a kind specified in the AML/CTF Rules.

(2A) This Part does not apply to an instruction that arises from the use of a debit card or a credit card at a branch of a financial institution if:
  (a) the number of the card is included in the instruction; and
  (b) the card is not of a kind specified in the AML/CTF Rules; and
  (c) the use does not take place in circumstances of a kind specified in the AML/CTF Rules.

Cheques

(3) This Part does not apply to an instruction given by way of a cheque unless the cheque is of a kind specified in the AML/CTF Rules.

ATMs

(4) This Part does not apply to an instruction given by the use of an ATM if:

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(a) the ATM is not of a kind specified in the AML/CTF Rules; and
(b) the use does not take place in circumstances of a kind specified in the AML/CTF Rules.

Merchant terminals

(4A) This Part does not apply to an instruction given by way of the operation of a merchant terminal if:
(a) the operation is authorised by a financial institution; and
(b) the merchant terminal is not of a kind specified in the AML/CTF Rules; and
(c) the operation does not take place in circumstances of a kind specified in the AML/CTF Rules.

Inter-financial institution transfers

(5) This Part does not apply to a transfer of money between 2 financial institutions if each financial institution acts on its own behalf.

Prescribed instructions

(6) This Part does not apply to an instruction of a kind prescribed by the AML/CTF Rules.

68 Defence of relying on information supplied by another person

Scope

(1) This section applies to section 175 proceedings for a contravention of a civil penalty provision of Division 2 or 3.

Defence

(2) In the proceedings, it is a defence if the defendant proves that:
(a) the contravention in respect of which the proceedings were instituted was due to reasonable reliance on information given by another person; and

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(b) the other person did not give the information in the other person's capacity as an officer, employee or agent of the person who relied on the information.

69 Division 400 and Chapter 5 of the *Criminal Code*

If a person, or an officer, employee or agent of a person, communicates or gives information to the AUSTRAC CEO under section 64 or 66, the person, officer, employee or agent is taken, for the purposes of Division 400 and Chapter 5 of the *Criminal Code*, not to have been in possession of that information at any time.

70 Required transfer information

For the purposes of the application of this Act to an electronic funds transfer instruction, the ***required transfer information*** is:

(a) if:

(i) the transfer instruction is of a kind specified in the AML/CTF Rules; or

(ii) the ordering institution accepts the transfer instruction in circumstances specified in the AML/CTF Rules; or

(iii) the transfer instruction is, or is to be, passed on, or carried out, in circumstances specified in the AML/CTF Rules;

the tracing information; or

(b) if:

(i) the ordering institution accepts the transfer instruction at or through a permanent establishment of the ordering institution in a particular country; and

(ii) the beneficiary institution makes, or is to make, the money available at or through a permanent establishment of the beneficiary institution in another country; and

(iii) the transfer instruction is a batched electronic funds transfer instruction; and

(iv) paragraph (a) does not apply;

the tracing information; or

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(c) if:
  (i) the ordering institution accepts the transfer instruction at or through a permanent establishment of the ordering institution in a particular country; and
  (ii) the beneficiary institution makes, or is to make, the money available at or through a permanent establishment of the beneficiary institution in another country; and
  (iii) the transfer instruction is not a batched electronic funds transfer instruction; and
  (iv) paragraph (a) does not apply;
  the complete payer information; or

(d) if:
  (i) the ordering institution accepts the transfer instruction at or through a permanent establishment of the ordering institution in Australia; and
  (ii) the beneficiary institution makes, or is to make, the money available at or through a permanent establishment of the beneficiary institution in Australia; and
  (iii) paragraph (a) does not apply;
  the tracing information.

Note 1: For ***complete payer information***, see section 71.

Note 2: For ***tracing information***, see section 72.

71 Complete payer information

For the purposes of the application of this Act to an electronic funds transfer instruction, the ***complete payer information*** is:

(a) the name of the payer; and

(b) one of the following:
  (i) the payer's full business or residential address (not being a post office box);
  (ii) a unique identification number given to the payer by the Commonwealth or an authority of the Commonwealth (for example, an Australian Business Number or an Australian Company Number);

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(iii) a unique identification number given to the payer by the government of a foreign country;

(iv) the identification number given to the payer by the ordering institution;

(v) if the payer is an individual—the payer's date of birth, the country of the payer's birth and the town, city or locality of the payer's birth; and

(c) if the money is, or is to be, transferred from a single account held by the payer with the ordering institution in Australia—the account number for the account; and

(d) if paragraph (c) does not apply—either:

(i) a unique reference number for the transfer instruction; or

(ii) if the money is, or is to be, transferred from a single account held by the payer with the ordering institution—the account number for the account.

72 Tracing information

For the purposes of the application of this Act to an electronic funds transfer instruction, the ***tracing information*** is:

(a) if the money is to be transferred from an account held by the payer with the ordering institution—the account number; or

(b) in any case—a unique reference number for the transfer instruction.

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Part 6—The Remittance Sector Register

Division 1—Simplified outline

73 Simplified outline

The following is a simplified outline of this Part:

- This Part provides for a tiered system of registration for providers of registrable remittance network services and providers of registrable designated remittance services.
- Division 2 sets out offences and civil penalties in relation to the provision of registrable remittance network services and registrable designated remittance services by persons who are not registered.
- Division 3 requires the AUSTRAC CEO to maintain the Remittance Sector Register and sets out the process of applying for registration.

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Division 2—Restrictions on providing certain remittance services

74 Unregistered persons must not provide certain remittance services

Registrable remittance network services

(1) A person (the ***first person***) must not provide a registrable remittance network service to another person if:

(a) the first person is not a registered remittance network provider; or

(b) the first person is a registered remittance network provider, but the person to whom the service is provided is not a registered remittance affiliate of the first person.

Registrable designated remittance services—independents

(1A) A person must not provide a registrable designated remittance service if:

(a) the person provides the service other than as part of a remittance network operated by a registered remittance network provider; and

(b) the person is not a registered independent remittance dealer.

Registrable designated remittance services—affiliates

(1B) A person must not provide a registrable designated remittance service if:

(a) the person provides the service as part of a remittance network operated by a registered remittance network provider; and

(b) the person is not a registered remittance affiliate of the registered remittance network provider.

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Breach of conditions

(1C) A person must not breach a condition to which the registration of the person as any of the following is subject:

(a) a remittance network provider;

(b) an independent remittance dealer;

(c) a remittance affiliate of a registered remittance network provider.

Offences

(2) A person commits an offence if:

(a) the person is subject to a requirement under subsection (1), (1A), (1B) or (1C); and

(b) the person engages in conduct; and

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

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

(3) Strict liability applies to paragraphs (2)(b) and (c).

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

(4) A person commits an offence if:

(a) the person is subject to a requirement under subsection (1), (1A), (1B) or (1C); and

(b) the person engages in conduct; and

(c) the person's conduct breaches the requirement; and

(d) the AUSTRAC CEO previously:

(i) gave the person a direction under subsection 191(2) in relation to subsection (1), (1A), (1B) or (1C) of this section; or

(ii) accepted an undertaking given by the person under section 197 in relation to subsection (1), (1A), (1B) or (1C) of this section; and

(e) that was the only occasion on which the AUSTRAC CEO previously gave such a direction to, or accepted such an undertaking from, the person.

Penalty: Imprisonment for 4 years or 1,000 penalty units, or both.

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(5) Strict liability applies to paragraphs (4)(b) and (c).

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

(6) A person commits an offence if:

(a) the person is subject to a requirement under subsection (1), (1A), (1B) or (1C); and

(b) the person engages in conduct; and

(c) the person's conduct breaches the requirement; and

(d) the AUSTRAC CEO previously:

(i) gave the person a direction under subsection 191(2) in relation to subsection (1), (1A), (1B) or (1C) of this section; or

(ii) accepted an undertaking given by the person under section 197 in relation to subsection (1), (1A), (1B) or (1C) of this section; and

(e) that was not the only occasion on which the AUSTRAC CEO previously gave such a direction to, or accepted such an undertaking from, the person.

Penalty: Imprisonment for 7 years or 2,000 penalty units, or both.

(7) Strict liability applies to paragraphs (6)(b) and (c).

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

(8) A person commits an offence if:

(a) the person is subject to a requirement under subsection (1), (1A), (1B) or (1C); and

(b) the person engages in conduct; and

(c) the person's conduct breaches the requirement; and

(d) either:

(i) the person had previously been convicted of an offence against subsection (2), (4) or (6), and that conviction has not been set aside or quashed; or

(ii) an order had previously been made against the person under section 19B of the *Crimes Act 1914* in respect of an offence against subsection (2), (4) or (6), and that order has not been set aside.

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Penalty: Imprisonment for 7 years or 2,000 penalty units, or both.

(9) Strict liability applies to paragraphs (8)(b) and (c).

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

Civil penalty

(10) Subsections (1), (1A), (1B) and (1C) are civil penalty provisions.

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Division 3—Registration of persons

75 Remittance Sector Register

(1) The AUSTRAC CEO must maintain a register for the purposes of this Part, to be known as the Remittance Sector Register.

(2) The AUSTRAC CEO may maintain the Remittance Sector Register by electronic means.

(3) The Remittance Sector Register is not a legislative instrument.

(4) The AML/CTF Rules may make provision for and in relation to the following:

(a) the correction of entries in the Remittance Sector Register;

(b) the publication of the Remittance Sector Register in whole or part, or of specified information entered on the Remittance Sector Register;

(c) any other matter relating to the administration or operation of the Remittance Sector Register.

75A Information to be entered on the Remittance Sector Register

(1) If the AUSTRAC CEO decides to register a person under subsection 75C(2), the AUSTRAC CEO must enter the following details on the Remittance Sector Register:

(a) the name of the person;

(b) whether the person is registered as:

(i) a remittance network provider; or

(ii) an independent remittance dealer; or

(iii) a remittance affiliate of a registered remittance network provider;

(c) if the person is registered as a remittance affiliate of a registered remittance network provider—the name of the registered remittance network provider;

(d) any conditions to which the registration of the person is subject;

(e) the date on which the registration takes effect;

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(f) the registrable details in relation to the person.

(2) To avoid doubt, nothing in this Part prevents separate entries being entered on the Remittance Sector Register in relation to the same person in different capacities.

75B Applications for registration

(1) A person may apply in writing to the AUSTRAC CEO for registration as:

(a) a remittance network provider; or

(b) an independent remittance dealer; or

(c) subject to subsection (5)—a remittance affiliate of a registered remittance network provider.

(2) A registered remittance network provider may apply in writing to the AUSTRAC CEO for another person to be registered as a remittance affiliate of the registered remittance network provider.

(3) An application under subsection (1) or (2) must:

(a) be in the approved form; and

(b) contain the information required by the AML/CTF Rules.

(4) Without limiting the information that the AML/CTF Rules may require under paragraph (3)(b), the AML/CTF Rules may require information relating to the matters mentioned in paragraph 75C(2)(a) or in Rules made under paragraph 75C(2)(b) (these provisions deal with matters to which the AUSTRAC CEO must have regard in deciding whether to register a person).

(5) A person may apply for registration as a remittance affiliate of a registered remittance network provider as mentioned in paragraph (1)(c) only if:

(a) either:

(i) when the person makes the application, the person is a registered independent remittance dealer; or

(ii) the application is made in conjunction with an application by the person for registration as a registered independent remittance dealer; and

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(b) the registered remittance network provider has consented to the making of the application.

Deemed refusal in certain circumstances

(6) If the AUSTRAC CEO has not made a decision on the application within the relevant period, the AUSTRAC CEO is taken to have decided not to register the person at the end of the relevant period. The ***relevant period*** is the period of 90 days beginning:

(a) on the day the application is made; or

(b) if the AUSTRAC CEO requests information under subsection 75N(1) in relation to the application—on the day the information is provided.

Note: A deemed decision not to register the person is reviewable (see Part 17A).

(7) However, if the AUSTRAC CEO determines in writing that:

(a) the application cannot be dealt with properly within the 90 day period, either because of its complexity or because of other special circumstances; and

(b) that period is extended by a specified period of not more than 30 days;

the relevant period is that period as so extended. The AUSTRAC CEO must notify the applicant in writing of the determination before the end of the 90 day period.

75C Registration by AUSTRAC CEO

When section applies

(1) This section applies if an application has been made under section 75B for registration of a person.

When AUSTRAC CEO must register a person

(2) The AUSTRAC CEO must decide to register the person in accordance with the application if the AUSTRAC CEO is satisfied that it is appropriate to do so, having regard to:

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(a) whether registering the person would involve a significant money laundering, financing of terrorism or people smuggling risk; and

(b) such other matters (if any) as are specified in the AML/CTF Rules under this paragraph.

Note: A decision not to register the person is reviewable (see Part 17A).

Matters that may be specified in the AML/CTF Rules

(3) Without limiting the matters that the AML/CTF Rules may specify under paragraph (2)(b), the matters may relate to the following:

(a) offences of which the applicant for registration, a person proposed to be entered on the Remittance Sector Register as a remittance affiliate of the applicant, or any other person, has been charged or convicted under the law of the Commonwealth, a State or Territory or a foreign country;

(b) the compliance or non-compliance of the applicant, a person proposed to be entered on the Remittance Sector Register as a remittance affiliate of the applicant, or any other person, with this Act or any other law;

(c) the legal and beneficial ownership and control of the applicant, a person proposed to be entered on the Remittance Sector Register as a remittance affiliate of the applicant, or any other person;

(d) the kinds of designated services to be provided by the applicant or by a person proposed to be entered on the Remittance Sector Register as a remittance affiliate of the applicant;

(e) the consent of a person proposed to be entered on the Remittance Sector Register as a remittance affiliate of the applicant.

Notice of decision to register

(4) The AUSTRAC CEO must, as soon as practicable after deciding to register a person, give a written notice to:

(a) the applicant for registration; and

(b) if the application was made by a registered remittance network provider for another person to be registered as a

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remittance affiliate of the registered remittance network provider—the other person.

Contents of notice of decision to register

(5) A notice under subsection (4) in relation to a decision to register a person must specify:

(a) whether the person is registered as:

(i) a remittance network provider; or

(ii) an independent remittance dealer; or

(iii) a remittance affiliate of a registered remittance network provider; and

(b) the conditions (if any) to which the registration is subject (see section 75E); and

(c) the date on which the registration takes effect.

75D Spent convictions scheme

The AML/CTF Rules made under paragraph 75B(3)(b) or 75C(2)(b) must not affect the operation of Part VIIC of the *Crimes Act 1914* (which includes provisions that, in certain circumstances, relieve persons from the requirement to disclose spent convictions and require persons aware of such convictions to disregard them).

75E Registration may be subject to conditions

(1) The AUSTRAC CEO may, in writing, impose conditions to which the registration of a person under subsection 75C(2) is subject.

Note: A decision to impose a condition is reviewable (see Part 17A).

(2) Without limiting the conditions that the AUSTRAC CEO may impose under subsection (1), the conditions may relate to the following:

(a) the volume of funds remitted (whether by reference to a particular time, a particular amount or otherwise);

(b) the destination (however described) of funds remitted;

(c) requiring notification of particular changes in circumstances.

Note: Section 75M imposes a general obligation in relation to notification of changes in circumstances.

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75F When registration of a person ceases

(1) The registration of a person ceases at the earliest of the following times:

(a) when the cancellation of the registration of the person under section 75G takes effect;

(b) when the entry relating to the registration of the person is removed from the Remittance Sector Register under subsection 75K(2);

(c) subject to subsection (2)—3 years after the day on which the registration took effect;

(d) in the case of an individual—when the individual dies;

(e) in the case of a body corporate—when the body corporate ceases to exist.

(2) Paragraph (1)(c) is subject to the AML/CTF Rules made under section 75J (which deals with renewal of registration).

75G Cancellation of registration

(1) The AUSTRAC CEO may cancel the registration of a person if the AUSTRAC CEO is satisfied that it is appropriate to do so, having regard to:

(a) whether the continued registration of the person involves, or may involve, a significant money laundering, financing of terrorism or people smuggling risk; or

(b) one or more breaches by the person of a condition of registration; or

(c) such other matters (if any) as are specified in the AML/CTF Rules under this paragraph.

Note: A decision to cancel a registration is reviewable (see Part 17A).

(2) The cancellation of the registration of a person takes effect on the day specified in the notice given to the person under subsection 233C(1).

(3) The AUSTRAC CEO may publish, in the manner specified in the AML/CTF Rules, a list of the names of persons whose registration has been cancelled and the date the cancellation takes effect.

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75H Suspension of registration

(1) The AML/CTF Rules may make provision for and in relation to the suspension of registrations by the AUSTRAC CEO under this Part.

(2) The AML/CTF Rules may provide for matters including, but not limited to, the following:
   (a) the grounds for suspension of registration;
   (b) the effect of suspension on registration;
   (c) the period for which suspensions have effect;
   (d) the effect of suspension of a registered remittance network provider upon its registered remittance affiliates;
   (e) making entries in and removing entries from the Remittance Sector Register in relation to suspension;
   (f) notices of suspension;
   (g) review of decisions relating to suspension.

75J Renewal of registration

(1) The AML/CTF Rules may make provision for and in relation to the renewal of registrations by the AUSTRAC CEO under this Part.

(2) The AML/CTF Rules may provide for matters including, but not limited to, the following:
   (a) the making of applications for renewal;
   (b) the period within which applications for renewal may be made;
   (c) the criteria for determining applications for renewal;
   (d) entries in the Remittance Sector Register in relation to renewal;
   (e) the giving of notices relating to decisions on applications for renewal;
   (f) review of decisions relating to applications for renewal;
   (g) the period for which renewed registrations have effect.

(3) In particular, the AML/CTF Rules may provide that:

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(a) if the registration of a person would otherwise cease at the end of the period of 3 years commencing on the day on which the registration took effect; and

(b) before the end of that period, an application for renewal of the registration was made to the AUSTRAC CEO within the period, and in the manner provided for, in the AML/CTF Rules;

the registration of the person continues in effect after the end of that period in accordance with the Rules.

75K Removal of entries from the Remittance Sector Register

Removal on request

(1) A person who is one or more of the following:

(a) a registered remittance network provider;

(b) a registered independent remittance dealer;

(c) a registered remittance affiliate of a registered remittance network provider;

may request the AUSTRAC CEO, in writing, to remove the entry relating to one or more of the registrations of the person from the Remittance Sector Register.

(2) If a person makes a request under subsection (1) in relation to one or more registrations, the AUSTRAC CEO must remove from the Remittance Sector Register the entry relating to each registration to which the request relates.

Removal on cessation of registration—remittance network providers

(3) If a person ceases to be a registered remittance network provider, the AUSTRAC CEO must remove from the Remittance Sector Register:

(a) the entry relating to the registered remittance network provider; and

(b) each entry relating to a registered remittance affiliate of the registered remittance network provider.

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Removal on cessation of registration—independent remittance dealers and affiliates

(4) If a person ceases to be a registered independent remittance dealer or a registered remittance affiliate of a registered remittance network provider, the AUSTRAC CEO must remove from the Remittance Sector Register each entry relating to the independent remittance dealer or the remittance affiliate, as the case requires.

Notice of removal—remittance network providers

(5) The AUSTRAC CEO must, as soon as reasonably practicable, notify a remittance network provider, in writing, if:
  (a) the AUSTRAC CEO removes from the Remittance Sector Register an entry relating to a remittance affiliate of the provider; and
  (b) the removal of the affiliate was not because of the removal of the provider as required by paragraph (3)(b).

Notice of removal—affiliates of remittance network providers

(6) The AUSTRAC CEO must, as soon as reasonably practicable, notify each affiliate of a remittance network provider, in writing, if the AUSTRAC CEO removes from the Remittance Sector Register the entry relating to the provider.

75L AML/CTF Rules—general provision

If a provision of this Part provides for the AML/CTF Rules to make provision in relation to a matter relating to the registration or proposed registration of a person, the AML/CTF Rules may make different provision in relation to a matter depending on whether the registration or proposed registration of the person is as:
  (a) a remittance network provider; or
  (b) an independent remittance dealer; or
  (c) a remittance affiliate of a registered remittance network provider.

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75M Registered persons to advise of material changes in circumstance etc.

(1) A person who is registered under this Part as:

(a) a remittance network provider; or

(b) an independent remittance dealer; or

(c) a remittance affiliate of a registered remittance network provider that applied for registration on its own behalf (see paragraph 75B(1)(c));

must advise the AUSTRAC CEO of the following:

(d) any change in circumstances that could materially affect the person's registration;

(e) any matters specified in the AML/CTF Rules for the purposes of this paragraph.

(2) A registered remittance affiliate of a registered remittance network provider must advise the provider of the following:

(a) any change in circumstances that could materially affect the person's registration;

(b) any matters specified in the AML/CTF Rules for the purposes of this paragraph;

unless the affiliate applied for registration on its own behalf (see paragraph 75B(1)(c)).

(3) A registered remittance network provider must advise the AUSTRAC CEO of any changes notified to it under subsection (2).

(4) A person who is required by this section to advise the AUSTRAC CEO or a registered remittance network provider of a change in circumstances or a matter must do so in accordance with the approved form, and:

(a) in the case of a requirement under subsection (1) or (2)—within 14 days of the change in circumstances or the matter arising (however described); and

(b) in the case of a requirement under subsection (3)—within 7 days of the registered remittance network provider concerned receiving the advice.

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Civil penalty

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

75N AUSTRAC CEO may request further information

(1) The AUSTRAC CEO may, in writing, request further information from any person for the purposes of making a decision under this Part.

(2) The AUSTRAC CEO is not required to make a decision under this Part until any information requested under subsection (1) in relation to the decision has been provided.

75P Immunity from suit

An action, suit or proceeding (whether criminal or civil) does not lie against:

(a) the Commonwealth; or

(b) the AUSTRAC CEO; or

(c) a member of the staff of AUSTRAC;

in relation to the publication of the Remittance Sector Register or a list of a kind mentioned in subsection 75G(3).

75Q Steps to be taken by AUSTRAC CEO before making certain reviewable decisions

(1) Before making a reviewable decision under section 75C, 75E or 75G in relation to one or more persons, the AUSTRAC CEO must give a written notice to each of the persons containing:

(a) the terms of the proposed decision; and

(b) if the proposed decision is to cancel a registration—the date on which the cancellation is proposed to take effect; and

(c) the reasons for the proposed decision; and

(d) a statement that the person may, within 28 days of the giving of the notice, make a submission under this section in relation to the proposed decision.

Note: An example of a reviewable decision relating to 2 persons is a decision refusing to register a person as a remittance affiliate of a

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registered remittance network provider, if the provider applied under subsection 75B(2) for that person to be so registered.

(2) The AUSTRAC CEO is not required to give a notice under this section if the AUSTRAC CEO is satisfied that it is inappropriate to do so because of the urgency of the circumstances.

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Division 5—Basis of registration

75T Basis of registration

Registration under this Part is on the basis that:

(a) the registration may cease as mentioned in section 75F; and

(b) the registration may be suspended as mentioned in section 75H; and

(c) the registration may be made subject to conditions as mentioned in section 75E; and

(d) the registration may cease, be suspended or be made subject to conditions by or under later legislation; and

(e) no compensation is payable if the registration ceases, is suspended or made subject to conditions as mentioned in any of the above paragraphs.

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Part 7—Anti-money laundering and counter-terrorism financing programs

Division 1—Introduction

80 Simplified outline

The following is a simplified outline of this Part:

- A reporting entity must have and comply with an anti-money laundering and counter-terrorism financing program.
- An anti-money laundering and counter-terrorism financing program is divided into Part A (general) and Part B (customer identification).
- Part A of an anti-money laundering and counter-terrorism financing program is designed to identify, mitigate and manage the risk a reporting entity may reasonably face that the provision by the reporting entity of designated services at or through a permanent establishment of the entity in Australia might (whether inadvertently or otherwise) involve or facilitate:
    (a) money laundering; or
    (b) financing of terrorism.
- Part B of an anti-money laundering and counter-terrorism financing program sets out the applicable customer identification procedures for customers of the reporting entity.

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Division 2—Reporting entity's obligations

81 Reporting entity must have an anti-money laundering and counter-terrorism financing program

(1) A reporting entity must not commence to provide a designated service to a customer if the reporting entity:

(a) has not adopted; and

(b) does not maintain;

an anti-money laundering and counter-terrorism financing program that applies to the reporting entity.

Civil penalty

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

82 Compliance with Part A of an anti-money laundering and counter-terrorism financing program

Compliance with program

(1) If a reporting entity has adopted:

(a) a standard anti-money laundering and counter-terrorism financing program; or

(b) a joint anti-money laundering and counter-terrorism financing program;

that applies to the reporting entity, the reporting entity must comply with:

(c) Part A of the program; or

(d) if the program has been varied on one or more occasions—Part A of the program as varied.

Civil penalty

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

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Exceptions

(3) Subsection (1) does not apply to a particular provision of Part A of a standard anti-money laundering and counter-terrorism financing program if the provision was not included in the program in order to comply with the requirements specified in AML/CTF Rules made for the purposes of paragraph 84(2)(c).

(4) Subsection (1) does not apply to a particular provision of Part A of a joint anti-money laundering and counter-terrorism financing program if the provision was not included in the program in order to comply with the requirements specified in AML/CTF Rules made for the purposes of paragraph 85(2)(c).

(5) A person who wishes to rely on subsection (3) or (4) bears an evidential burden in relation to that matter.

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Division 3—Anti-money laundering and counter-terrorism financing programs

83 Anti-money laundering and counter-terrorism financing programs

(1) An ***anti-money laundering and counter-terrorism financing program*** is:

(a) a standard anti-money laundering and counter-terrorism financing program (see section 84); or

(b) a joint anti-money laundering and counter-terrorism financing program (see section 85); or

(c) a special anti-money laundering and counter-terrorism financing program (see section 86).

(2) An anti-money laundering and counter-terrorism financing program is not a legislative instrument.

84 Standard anti-money laundering and counter-terrorism financing program

(1) A ***standard anti-money laundering and counter-terrorism financing program*** is a written program that:

(a) applies to a particular reporting entity; and

(b) is divided into the following parts:

(i) Part A (general);

(ii) Part B (customer identification).

Note: A standard anti-money laundering and counter-terrorism financing program does not bind the reporting entity unless the reporting entity adopts the program (see section 82).

Part A (general)

(2) Part A of a standard anti-money laundering and counter-terrorism financing program is a part:

(a) the primary purpose of which is to:

(i) identify; and

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(ii) mitigate; and

(iii) manage;

the risk the reporting entity may reasonably face that the provision by the reporting entity of designated services at or through a permanent establishment of the reporting entity in Australia might (whether inadvertently or otherwise) involve or facilitate:

(iv) money laundering; or

(v) financing of terrorism; and

(b) if the reporting entity provides designated services at or through a permanent establishment of the reporting entity in a foreign country—another purpose of which is to ensure that the reporting entity takes such action (if any) as is specified in the AML/CTF Rules in relation to the provision by the reporting entity of designated services at or through a permanent establishment of the reporting entity in a foreign country; and

(c) that complies with such requirements (if any) as are specified in the AML/CTF Rules.

Part B (customer identification)

(3) Part B of a standard anti-money laundering and counter-terrorism financing program is a part:

(a) the sole or primary purpose of which is to set out the applicable customer identification procedures for the purposes of the application of this Act to customers of the reporting entity; and

(b) that complies with such requirements (if any) as are specified in the AML/CTF Rules.

Reviews

(4) A requirement under paragraph (2)(c) may relate to reviews of a standard anti-money laundering and counter-terrorism financing program.

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Holder of an Australian financial services licence

(5) A reporting entity is not entitled to adopt or maintain a standard anti-money laundering and counter-terrorism financing program if all of the designated services provided by the reporting entity are covered by item 54 of table 1 in section 6.

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

Registered remittance affiliates of a registered remittance network provider

(5A) A reporting entity that is a registered remittance network provider must make available a standard anti-money laundering and counter-terrorism financing program to its registered remittance affiliates for the purpose of adoption and maintenance under section 81 by those affiliates. To avoid doubt, this subsection does not prevent a remittance affiliate from adopting a program other than one made available under this section.

Civil penalty

(5B) Subsection (5A) is a civil penalty provision.

Variation

(6) A standard anti-money laundering and counter-terrorism financing program may be varied, so long as the varied program is a standard anti-money laundering and counter-terrorism financing program.

Registered scheme—compliance plan

(7) If a reporting entity is the responsible entity of a registered scheme (within the meaning of the *Corporations Act 2001*), the reporting entity's standard anti-money laundering and counter-terrorism financing program may be set out in the same document as the registered scheme's compliance plan under that Act.

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85 Joint anti-money laundering and counter-terrorism financing program

(1) A ***joint anti-money laundering and counter-terrorism financing program*** is a written program that:

(a) applies to each reporting entity that from time to time belongs to a particular designated business group; and

(b) is divided into the following parts:

(i) Part A (general);

(ii) Part B (customer identification).

Note: A joint anti-money laundering and counter-terrorism financing program does not bind any of those reporting entities unless the reporting entity adopts the program (see section 82).

Part A (general)

(2) Part A of a joint anti-money laundering and counter-terrorism financing program is a part:

(a) the primary purpose of which is to:

(i) identify; and

(ii) mitigate; and

(iii) manage;

the risk each of those reporting entities may reasonably face that the provision by the relevant reporting entity of designated services at or through a permanent establishment of the relevant reporting entity in Australia might (whether inadvertently or otherwise) involve or facilitate:

(iv) money laundering; or

(v) financing of terrorism; and

(b) if any of those reporting entities provides designated services at or through a permanent establishment of the relevant reporting entity in a foreign country—another purpose of which is to ensure that the relevant reporting entity takes such action (if any) as is specified in the AML/CTF Rules in relation to the provision by the relevant reporting entity of designated services at or through a permanent establishment of the relevant reporting entity in a foreign country; and

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(c) that complies with such requirements (if any) as are specified in the AML/CTF Rules.

Part B (customer identification)

(3) Part B of a joint anti-money laundering and counter-terrorism financing program is a part:

(a) the sole or primary purpose of which is to set out the applicable customer identification procedures for the purposes of the application of this Act to customers of each of those reporting entities; and

(b) that complies with such requirements (if any) as are specified in the AML/CTF Rules.

Different reporting entities

(4) A joint anti-money laundering and counter-terrorism financing program may make different provision with respect to different reporting entities. This does not limit subsection 33(3A) of the *Acts Interpretation Act 1901*.

Reviews

(5) A requirement under paragraph (2)(c) may relate to reviews of a joint anti-money laundering and counter-terrorism financing program.

Variation

(7) A joint anti-money laundering and counter-terrorism financing program may be varied, so long as the varied program is a joint anti-money laundering and counter-terrorism financing program.

86 Special anti-money laundering and counter-terrorism financing program

(1) A ***special anti-money laundering and counter-terrorism financing program*** is a written program:

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(a) that applies to a particular reporting entity, where all of the designated services provided by the reporting entity are covered by item 54 of table 1 in section 6; and

(b) the sole or primary purpose of which is to set out the applicable customer identification procedures for the purposes of the application of this Act to customers of the reporting entity; and

(c) that complies with such requirements (if any) as are specified in the AML/CTF Rules.

Note 1: A special anti-money laundering and counter-terrorism financing program does not bind the reporting entity unless the reporting entity adopts the program (see section 82).

Note 2: Item 54 of table 1 in section 6 covers a holder of an Australian financial services licence who arranges for a person to receive a designated service.

(2) A reporting entity is not entitled to adopt or maintain a special anti-money laundering and counter-terrorism financing program unless all of the designated services provided by the reporting entity are covered by item 54 of table 1 in section 6.

Variation

(3) A special anti-money laundering and counter-terrorism financing program may be varied, so long as the varied program is a special anti-money laundering and counter-terrorism financing program.

87 Revocation of adoption of anti-money laundering and counter-terrorism financing program

If a reporting entity has adopted an anti-money laundering and counter-terrorism financing program that applies to the reporting entity, this Part does not prevent the reporting entity from:

(a) revoking that adoption; and

(b) adopting another anti-money laundering and counter-terrorism financing program that applies to the reporting entity.

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88 Different applicable customer identification procedures

(1) Each of the following:

(a) Part B of a standard anti-money laundering and counter-terrorism financing program;

(b) Part B of a joint anti-money laundering and counter-terrorism financing program;

(c) a special anti-money laundering and counter-terrorism financing program;

(d) AML/CTF Rules made for the purposes of paragraph 84(3)(b), 85(3)(b) or 86(1)(c);

may make different provision with respect to:

(e) different kinds of customers; or

(f) different kinds of designated services; or

(g) different circumstances.

(2) Subsection (1) does not limit subsection 33(3A) of the *Acts Interpretation Act 1901*.

Note: The following are examples of different kinds of customers:

(a) individuals;

(b) companies;

(c) trusts;

(d) partnerships.

89 Applicable customer identification procedures—agent of customer

Standard anti-money laundering and counter-terrorism financing program

(1) To avoid doubt, AML/CTF Rules made for the purposes of paragraph 84(3)(b) may require that Part B of a standard anti-money laundering and counter-terrorism financing program must provide that, if:

(a) a customer of the reporting entity deals with the reporting entity in relation to the provision of a designated service through an agent of the customer; and

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(b) the customer does so in circumstances specified in the AML/CTF Rules;

one or more elements of the applicable customer identification procedure for the customer must involve the taking of steps specified in the AML/CTF Rules in relation to the agent.

Joint anti-money laundering and counter-terrorism financing program

(2) To avoid doubt, AML/CTF Rules made for the purposes of paragraph 85(3)(b) may require that Part B of a joint anti-money laundering and counter-terrorism financing program must provide that, if:

(a) a customer of the reporting entity deals with the reporting entity in relation to the provision of a designated service through an agent of the customer; and

(b) the customer does so in circumstances specified in the AML/CTF Rules;

one or more elements of the applicable customer identification procedure for the customer must involve the taking of steps specified in the AML/CTF Rules in relation to the agent.

Special anti-money laundering and counter-terrorism financing program

(3) To avoid doubt, AML/CTF Rules made for the purposes of paragraph 86(1)(c) may require that a special anti-money laundering and counter-terrorism financing program must provide that, if:

(a) a customer of the reporting entity deals with the reporting entity in relation to the provision of a designated service through an agent of the customer; and

(b) the customer does so in circumstances specified in the AML/CTF Rules;

one or more elements of the applicable customer identification procedure for the customer must involve the taking of steps specified in the AML/CTF Rules in relation to the agent.

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90 Applicable customer identification procedures—customers other than individuals

Standard anti-money laundering and counter-terrorism financing program

(1) To avoid doubt, AML/CTF Rules made for the purposes of paragraph 84(3)(b) may require that Part B of a standard anti-money laundering and counter-terrorism financing program must provide that, if a customer of the reporting entity is:

(a) a company; or

(b) a trust; or

(c) a partnership; or

(d) a corporation sole; or

(e) a body politic;

one or more elements of the applicable customer identification procedure for the customer must involve the taking of steps specified in the AML/CTF Rules in relation to a person who is:

(f) associated with the customer; and

(g) specified in the AML/CTF Rules.

Note: For specification by class, see subsection 13(3) of the *Legislative Instruments Act 2003*.

Joint anti-money laundering and counter-terrorism financing program

(2) To avoid doubt, AML/CTF Rules made for the purposes of paragraph 85(3)(b) may require that Part B of a joint anti-money laundering and counter-terrorism financing program must provide that, if a customer of the reporting entity is:

(a) a company; or

(b) a trust; or

(c) a partnership; or

(d) a corporation sole; or

(e) a body politic;

one or more elements of the applicable customer identification procedure for the customer must involve the taking of steps specified in the AML/CTF Rules in relation to a person who is:

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(f) associated with the customer; and
(g) specified in the AML/CTF Rules.

Note: For specification by class, see subsection 13(3) of the *Legislative Instruments Act 2003*.

Special anti-money laundering and counter-terrorism financing program

(3) To avoid doubt, AML/CTF Rules made for the purposes of paragraph 86(1)(c) may require that a special anti-money laundering and counter-terrorism financing program must provide that, if a customer of the reporting entity is:
(a) a company; or
(b) a trust; or
(c) a partnership; or
(d) a corporation sole; or
(e) a body politic;
one or more elements of the applicable customer identification procedure for the customer must involve the taking of steps specified in the AML/CTF Rules in relation to a person who is:
(f) associated with the customer; and
(g) specified in the AML/CTF Rules.

Note: For specification by class, see subsection 13(3) of the *Legislative Instruments Act 2003*.

91 Applicable customer identification procedures—disclosure certificates

Standard anti-money laundering and counter-terrorism financing program

(1) To avoid doubt, AML/CTF Rules made for the purposes of paragraph 84(3)(b) may require that, if:
(a) a designated service is provided to a customer specified in the AML/CTF Rules; or
(b) a designated service is provided to a customer in circumstances specified in the AML/CTF Rules;

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Part B of a standard anti-money laundering and counter-terrorism financing program must provide that one or more elements of the applicable customer identification procedure for the customer must involve the reporting entity obtaining a certificate, to be known as a ***disclosure certificate***, from:

(c) the customer; or

(d) person who is:

(i) associated with the customer; and

(ii) specified in the AML/CTF Rules.

Note: For specification by class, see subsection 13(3) of the *Legislative Instruments Act 2003*.

Joint anti-money laundering and counter-terrorism financing program

(2) To avoid doubt, AML/CTF Rules made for the purposes of paragraph 85(3)(b) may require that, if:

(a) a designated service is provided to a customer specified in the AML/CTF Rules; or

(b) a designated service is provided to a customer in circumstances specified in the AML/CTF Rules;

Part B of a joint anti-money laundering and counter-terrorism financing program must provide that one or more elements of the applicable customer identification procedure for the customer must involve the reporting entity obtaining a certificate, to be known as a ***disclosure certificate***, from:

(c) the customer; or

(d) person who is:

(i) associated with the customer; and

(ii) specified in the AML/CTF Rules.

Note: For specification by class, see subsection 13(3) of the *Legislative Instruments Act 2003*.

Special anti-money laundering and counter-terrorism financing program

(3) To avoid doubt, AML/CTF Rules made for the purposes of paragraph 86(1)(c) may require that, if:

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(a) a designated service is provided to a customer specified in the AML/CTF Rules; or

(b) a designated service is provided to a customer in circumstances specified in the AML/CTF Rules;

a special anti-money laundering and counter-terrorism financing program must provide that one or more elements of the applicable customer identification procedure for the customer must involve the reporting entity obtaining a certificate, to be known as a ***disclosure certificate***, from:

(c) the customer; or

(d) person who is:

(i) associated with the customer; and

(ii) specified in the AML/CTF Rules.

Note: For specification by class, see subsection 13(3) of the *Legislative Instruments Act 2003*.

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Division 4—Other provisions

92 Request to obtain information from a customer

Scope

(1) This section applies to a reporting entity if:

(a) the reporting entity has adopted:

(i) a standard anti-money laundering and counter-terrorism financing program; or

(ii) a joint anti-money laundering and counter-terrorism financing program;

that applies to the reporting entity; and

(b) the reporting entity is providing, or has provided, a designated service to a particular customer; and

(c) the reporting entity has reasonable grounds to believe that the customer has information that is likely to assist the reporting entity to comply with:

(i) Part A of the program; or

(ii) if the program has been varied on one or more occasions—Part A of the program as varied.

Request to give information

(2) The reporting entity may, by written notice given to the customer, request the customer to give the reporting entity, within the period and in the manner specified in the notice, any such information.

(3) The notice must set out the effect of subsection (4).

Power to discontinue, restrict or limit provision of designated services

(4) If the customer does not comply with the request, the reporting entity may do any or all of following:

(a) refuse to continue to provide a designated service to the customer;

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(b) refuse to commence to provide a designated service to the customer;

(c) restrict or limit the provision of a designated service to the customer;

until the customer provides the information covered by the request.

Protection from liability

(5) An action, suit or proceeding (whether criminal or civil) does not lie against:

(a) the reporting entity; or

(b) an officer, employee or agent of the reporting entity acting in the course of his or her office, employment or agency;

in relation to anything done, or omitted to be done, in good faith by the reporting entity, officer, employee or agent in the exercise, or purported exercise, of the power conferred by subsection (4).

93 Exemptions

(1) Paragraphs 84(2)(a) and (b) and 85(2)(a) and (b) do not apply to a designated service that is of a kind specified in the AML/CTF Rules.

(2) Paragraphs 84(2)(a) and (b) and 85(2)(a) and (b) do not apply to a designated service that is provided in circumstances specified in the AML/CTF Rules.

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Part 8—Correspondent banking

94 Simplified outline

The following is a 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.
- Before a financial institution enters into a correspondent banking relationship with another financial institution, the financial institution must carry out a due diligence assessment.
- If a financial institution has entered into a correspondent banking relationship with another financial institution, the financial institution must carry out regular due diligence assessments.

95 Prohibition of entry into correspondent banking relationships with shell banks etc.

(1) A financial institution must not enter into a correspondent banking relationship with another person if the person does so reckless as to whether:

(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.

Note: For geographical links, see section 100.

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Civil penalty

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

96 Termination of correspondent banking relationship with shell bank etc.

(1) If:

(a) a financial institution (the ***first financial institution***) is in a correspondent banking relationship with another person; and

(b) the first financial institution becomes aware that the other person is a shell bank;

the first financial institution must, within:

(c) 20 business days after becoming aware as mentioned in paragraph (b); or

(d) such longer period (if any) as the AUSTRAC CEO allows;

terminate the correspondent banking relationship.

Note: For geographical links, see section 100.

(2) If:

(a) a financial institution (the ***first financial institution***) is in a correspondent banking relationship with another financial institution; and

(b) the first financial institution becomes aware that the other financial institution has a correspondent banking relationship with a shell bank;

the first financial institution must, within:

(c) 20 business days after becoming aware as mentioned in paragraph (b); or

(d) such longer period (if any) as the AUSTRAC CEO allows;

either:

(e) terminate the correspondent banking relationship mentioned in paragraph (a); or

(f) request the other financial institution to terminate the correspondent banking relationship mentioned in paragraph (b).

Note: For geographical links, see section 100.

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(3) If:

(a) a financial institution (the ***first financial institution***) makes a request under paragraph (2)(f) of another financial institution; and

(b) at the end of the period of 20 business days after the request was made, the other financial institution has not complied with the request;

the first financial institution must, within:

(c) 20 business days after the end of the period mentioned in paragraph (b); or

(d) such longer period (if any) as the AUSTRAC CEO allows;

terminate its 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.

97 Due diligence assessments before entering into correspondent banking relationships etc.

Preliminary risk assessment

(1) Before a financial institution (the ***first financial institution***) enters into a correspondent banking relationship with another financial institution, the first financial institution must carry out an assessment of the risk the first financial institution may reasonably face that the correspondent banking relationship might (whether inadvertently or otherwise) involve or facilitate:

(a) money laundering; or

(b) financing of terrorism.

Due diligence assessment

(2) Before a financial institution (the ***first financial institution***) enters into a correspondent banking relationship with another financial institution, the first financial institution must:

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(a) carry out an assessment of such matters as are specified in the AML/CTF Rules; and

(b) prepare a written record of the assessment as soon as practicable after the completion of the assessment;

if carrying out the assessment is warranted by the risk identified in the assessment carried out by the first financial institution under subsection (1).

Note: For geographical links, see section 100.

Civil penalty

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

98 Regular due diligence assessments of correspondent banking relationships etc.

Preliminary risk assessment

(1) If a financial institution (the ***first financial institution***) has, whether before or after the commencement of this section, entered into a correspondent banking relationship with another financial institution, the first financial institution must carry out regular assessments of the risk the first financial institution may reasonably face that the correspondent banking relationship might (whether inadvertently or otherwise) involve or facilitate:

(a) money laundering; or

(b) financing of terrorism.

Due diligence assessment

(2) If a financial institution (the ***first financial institution***) has, whether before or after the commencement of this section, entered into a correspondent banking relationship with another financial institution, the first financial institution must:

(a) carry out regular assessments of such matters as are specified in the AML/CTF Rules; and

(b) prepare a written record of each assessment as soon as practicable after the completion of the assessment;

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if carrying out those assessments are warranted by the risk identified in an assessment carried out by the first financial institution under subsection (1).

Note: For geographical links, see section 100.

Frequency of assessments

(3) The first assessment under subsection (1) must be carried out within:

(a) if the first financial institution enters into the correspondent banking relationship after the commencement of this section—the period:

(i) beginning at the time when the first financial institution enters into the correspondent banking relationship; and

(ii) ending at the end of the period ascertained in accordance with the AML/CTF Rules; or

(b) otherwise—the period:

(i) beginning at the commencement of this section; and

(ii) ending at the end of the period ascertained in accordance with the AML/CTF Rules.

(4) The intervals between subsequent assessments must not be longer than the period ascertained in accordance with the AML/CTF Rules.

(5) AML/CTF Rules made for the purposes of subparagraph (3)(a)(ii) or (b)(ii) or subsection (4) may provide that, for the purposes of the application of this Act to the first financial institution, the first financial institution is required or permitted to determine the period concerned, so long as the first financial institution has regard to such matters as are specified in the AML/CTF Rules.

(6) Subsection (5) does not limit subparagraph (3)(a)(ii) or (b)(ii) or subsection (4).

Civil penalty

(7) Subsections (1) and (2) are civil penalty provisions.

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99 Other rules about correspondent banking relationships

(1) A financial institution must not enter into a correspondent banking relationship with another person if a senior officer of the financial institution has not approved the entering into of that relationship, having regard to such matters (if any) as are specified in the AML/CTF Rules.

(2) If a financial institution has a correspondent banking relationship with another person, the financial institution must document:

(a) its responsibilities under that relationship; and

(b) the responsibilities of the other person under that relationship.

Civil penalty

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

100 Geographical links

A financial institution is not subject to a requirement under this Part in connection with a correspondent banking relationship the financial institution has, or proposes to have, with another person unless:

(a) the financial institution carries on an activity or business at or through a permanent establishment of the financial institution in Australia; or

(b) both:

(i) the financial institution is a resident of Australia; and

(ii) the financial institution carries on an activity or business at or through a permanent establishment of the financial institution in a foreign country; or

(c) both:

(i) the financial institution is a subsidiary of a company that is a resident of Australia; and

(ii) the financial institution carries on an activity or business at or through a permanent establishment of the financial institution in a foreign country.

Note: For ***resident***, see section 14.

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Part 9—Countermeasures

101 Simplified outline

The following is a simplified outline of this Part:

- The regulations may prohibit or regulate the entering into of transactions with residents of prescribed foreign countries.

102 Countermeasures

(1) The regulations may make provision for or in relation to prohibiting or regulating the entering into of transactions, where:

(a) both:

(i) one of the parties to the transaction is a resident of Australia; and

(ii) the other party, or any of the other parties, is a resident of a prescribed foreign country; or

(b) both:

(i) one of the parties to the transaction enters into the transaction in the course of carrying on an activity or business at or through a permanent establishment of the party in Australia; and

(ii) the other party, or any of the other parties, is a resident of a prescribed foreign country; or

(c) both:

(i) one of the parties to the transaction is a resident of Australia; and

(ii) the other party, or any of the other parties, is a corporation incorporated in a prescribed foreign country; or

(d) both:

(i) one of the parties to the transaction enters into the transaction in the course of carrying on an activity or

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business at or through a permanent establishment of the party in Australia; and

(ii) the other party, or any of the other parties, is a corporation incorporated in a prescribed foreign country; or

(e) both:

(i) one of the parties to the transaction is a resident of Australia; and

(ii) the other party, or any of the other parties, is an individual who is physically present in a prescribed foreign country; or

(f) both:

(i) one of the parties to the transaction enters into the transaction in the course of carrying on an activity or business at or through a permanent establishment of the party in Australia; and

(ii) the other party, or any of the other parties, is an individual who is physically present in a prescribed foreign country.

Note: For ***resident***, see section 14.

(2) Regulations made for the purposes of subsection (1):

(a) may be of general application; or

(b) may be limited by reference to any or all of the following:

(i) a specified transaction;

(ii) a specified party;

(iii) a specified prescribed foreign country.

Note 1: For specification by class, see subsection 13(3) of the *Legislative Instruments Act 2003*.

Note 2: For consultation requirements, see section 17 of the *Legislative Instruments Act 2003*.

103 Sunsetting of regulations after 2 years

Section 50 of the *Legislative Instruments Act 2003* has effect, in relation to regulations made for the purposes of subsection 102(1), as if each reference in that section to tenth anniversary were read as a reference to second anniversary.

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Part 10—Record-keeping requirements

Division 1—Introduction

104 Simplified outline

The following is a simplified outline of this Part:

- The AML/CTF Rules may provide that a reporting entity must make a record of a designated service. The reporting entity must retain the record for 7 years.
- If a customer of a reporting entity gives the reporting entity a document relating to the provision of a designated service, the reporting entity must retain the document for 7 years.
- 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.
- A reporting entity must retain a copy of its anti-money laundering and counter-terrorism financing program.

105 Privacy Act not overridden by this Part

This Part does not override Part IIIA of the *Privacy Act 1988*.

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Division 2—Records of transactions etc.

106 Records of designated services

(1) The AML/CTF Rules may provide that, if a reporting entity commences to provide, or provides, a specified kind of designated service to a customer, the reporting entity must make a record of information relating to the provision of the service.

(2) The AML/CTF Rules may provide that, if a reporting entity commences to provide, or provides, a designated service to a customer in circumstances specified in the AML/CTF Rules, the reporting entity must make a record of information relating to the provision of the service.

(3) A record under subsection (1) or (2) must comply with such requirements (if any) as are specified in the AML/CTF Rules.

(4) A reporting entity must comply with AML/CTF Rules made for the purposes of this section.

Civil penalty

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

Designated business groups

(6) If:

(a) a reporting entity is a member of a designated business group; and

(b) such other conditions (if any) as are specified in the AML/CTF Rules are satisfied;

the obligation imposed on the reporting entity by subsection (4) may be discharged by any other member of the group.

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107 Transaction records to be retained

Scope

(1) This section applies if:

(a) a reporting entity makes a record of information relating to the provision of a designated service to a customer; and

(b) the record is not declared by the AML/CTF Rules to be exempt from this section.

Retention

(2) The reporting entity must retain:

(a) the record; or

(b) a copy of the record; or

(c) an extract from the record showing the prescribed information;

for 7 years after the making of the record.

Civil penalty

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

Designated business groups

(4) If:

(a) a reporting entity is a member of a designated business group; and

(b) such other conditions (if any) as are specified in the AML/CTF Rules are satisfied;

the obligation imposed on the reporting entity by subsection (2) may be discharged by any other member of the group.

108 Customer-provided transaction documents to be retained

Scope

(1) This section applies if:

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(a) a document relating to the provision, or prospective provision, of a designated service by a reporting entity is given to the reporting entity by or on behalf of the customer concerned; and

(b) the reporting entity commences, or has commenced, to provide the service to the customer.

(2) The reporting entity must retain:

(a) the document; or

(b) a copy of the document;

for 7 years after the giving of the document.

Civil penalty

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

Designated business groups

(4) If:

(a) a reporting entity is a member of a designated business group; and

(b) such other conditions (if any) as are specified in the AML/CTF Rules are satisfied;

the obligation imposed on the reporting entity by subsection (2) may be discharged by any other member of the group.

109 Records relating to transferred ADI accounts

Scope

(1) This section applies if:

(a) a document is in the possession of an ADI (the ***transferor ADI***) in fulfilment of an obligation imposed on it by section 107 or 108; and

(b) the document relates to an active account that has been, or is proposed to be, transferred to another ADI (the ***transferee ADI***) under:

(i) a law of the Commonwealth or of a State or Territory; or

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(ii) an arrangement between the transferor ADI and the transferee ADI.

Transferor ADI must give document to the transferee ADI

(2) The transferor ADI must give the document to the transferee ADI within the 120-day period beginning 30 days before the transfer of the account.

Transferor ADI released from retention obligations

(3) Sections 107 and 108 do not apply to the transferor ADI, in relation to the document, if the transferor ADI gave the original or a copy of the document to the transferee ADI within the 120-day period beginning 30 days before the transfer of the account.

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

Retention obligations of transferee ADI

(4) If the transferee ADI is given the document within the 120-day period beginning 30 days before the transfer of the account, the transferee ADI must retain:

(a) the document; or

(b) a copy of the document;

for 7 years after the giving of the document.

Civil penalty

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

110 Retention of records relating to closed ADI accounts

Transferor ADI may give documents to transferee ADI

(1) An ADI (the ***transferor ADI***) may give the original and copies of a document (the ***second document***) relating to an account to another ADI (the ***transferee ADI***) if:

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(a) the transferor ADI has given another document (the ***first document***) relating to the same account to the transferee ADI in accordance with section 109; and

(b) the second document is in the transferor ADI's possession in fulfilment of an obligation imposed on it by section 107 or 108; and

(c) the second document relates to a closed account; and

(d) the transferor ADI and the transferee ADI agree in writing that the second document should be given by the transferor ADI to the transferee ADI within the 120-day period allowed by section 109 for the giving of the first document.

Transferor ADI released from retention obligations

(2) Sections 107 and 108 do not apply to the transferor ADI, in relation to the second document, if the transferor ADI gave the original or a copy of the second document to the transferee ADI within the 120-day period allowed by section 109 for the giving of the first document.

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

Retention obligations of transferee ADI

(3) If the transferee ADI is given the original or a copy of the second document within the 120-day period allowed by section 109 for the giving of the first document, the transferee ADI must retain:

(a) the second document; or

(b) a copy of the second document;

for 7 years after the giving of the second document.

Civil penalty

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

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Division 3—Records of identification procedures

111 Copying documents obtained in the course of carrying out an applicable custom identification procedure

For the purposes of this Act, if:

(a) a document is produced to a reporting entity in the course of an applicable customer identification procedure carried out under this Act; and

(b) the reporting entity makes a copy of the document;

the reporting entity is taken to have made a record of the information contained in the document.

112 Making of records of identification procedures

Scope

(1) This section applies to a reporting entity if the reporting entity carries out an applicable customer identification procedure in respect of a particular customer to whom the reporting entity provided, or proposed to provide, a designated service.

Records

(2) The reporting entity must make a record of:

(a) the procedure; and

(b) information obtained in the course of carrying out the procedure; and

(c) such other information (if any) about the procedure as is specified in the AML/CTF Rules.

(3) A record under subsection (2) must comply with such requirements (if any) as are specified in the AML/CTF Rules.

Civil penalty

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

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Designated business groups

(5) If:

(a) a reporting entity is a member of a designated business group; and

(b) such other conditions (if any) as are specified in the AML/CTF Rules are satisfied;

the obligation imposed on the reporting entity by subsection (2) may be discharged by any other member of the group.

113 Retention of records of identification procedures

Scope

(1) This section applies to a reporting entity if:

(a) the reporting entity carried out an applicable customer identification procedure in respect of a particular customer to whom the reporting entity provided, or proposed to provide, a designated service; and

(b) the reporting entity made a record of:

(i) the procedure; or

(ii) information obtained in the course of carrying out the procedure; or

(iii) such other information (if any) about the procedure as is specified in the AML/CTF Rules.

Retention

(2) The reporting entity must retain the record, or a copy of the record, until the end of the first 7-year period:

(a) that began at a time after the procedure was carried out; and

(b) throughout the whole of which the reporting entity did not provide any designated services to the customer.

Civil penalty

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

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Designated business groups

(4) If:

(a) a reporting entity is a member of a designated business group; and

(b) such other conditions (if any) as are specified in the AML/CTF Rules are satisfied;

the obligation imposed on the reporting entity by subsection (2) may be discharged by any other member of the group.

114 Records of identification procedures deemed to have been carried out by a reporting entity

Scope

(1) This section applies if:

(a) on a particular day (the ***customer identification day***), a reporting entity (the ***first reporting entity***) carried out the applicable customer identification procedure in respect of a particular customer to whom the reporting entity provided, or proposed to provide, a designated service; and

(b) under section 38, Part 2 has effect as if the applicable customer identification procedure had also been carried out in respect of the customer by another reporting entity (the ***second reporting entity***); and

(c) the first reporting entity made a record of:

(i) the procedure; or

(ii) information obtained in the course of carrying out the procedure; or

(iii) such other information (if any) about the procedure as is specified in the AML/CTF Rules; and

(d) the record is not declared by the AML/CTF Rules to be exempt from this section.

Copy of record to be given to second reporting entity

(2) If:

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(a) on the customer identification day, the customer is a customer to whom the second reporting entity provides, or proposes to provide, a designated service; and

(b) the second reporting entity does not already have a copy of the record;

the second reporting entity must, by written notice given to the first reporting entity within 5 business days after that day, request the first reporting entity to give the second reporting entity a copy of the record within 5 business days after the request is given.

(3) If:

(a) on a day later than the customer identification day, the customer becomes a customer to whom the second reporting entity provides, or proposes to provide, a designated service; and

(b) the second reporting entity does not already have a copy of the record;

the second reporting entity must, by written notice given to the first reporting entity within 5 business days after that later day, request the first reporting entity to give the second reporting entity a copy of the of the record within 5 business days after the request is given.

(4) The first reporting entity must comply with a request under whichever of subsections (2) and (3) is applicable.

Retention of copy by second reporting entity

(5) If the first reporting entity gives a copy of the record to the second reporting entity, the second reporting entity must retain the copy until the end of the first 7-year period:

(a) that began at a time after the applicable customer identification procedure was carried out; and

(b) throughout the whole of which the second reporting entity did not provide any designated services to the customer.

Civil penalty

(6) Subsections (2), (3), (4) and (5) are civil penalty provisions.

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Designated business groups

(7) If:

(a) a reporting entity is a member of a designated business group; and

(b) such other conditions (if any) as are specified in the AML/CTF Rules are satisfied;

an obligation imposed on the reporting entity by subsection (2), (3), (4) or (5) may be discharged by any other member of the group.

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Division 4—Records about electronic funds transfer instructions

115 Retention of records about electronic funds transfer instructions

Scope

(1) This section applies if:

(a) section 64 applies to:

(i) a multiple-institution person-to-person electronic funds transfer instruction; or

(ii) a multiple-institution same-person electronic funds transfer instruction; and

(b) a person is in the funds transfer chain; and

(c) the person is an interposed person and the transfer instruction is to be passed on by the person at or through a permanent establishment of the person in Australia; and

(d) the making available by the beneficiary institution of the transferred money would take place at or through a permanent establishment of the beneficiary institution in Australia; and

(e) some or all of the required transfer information was passed on to the person by another person in the funds transfer chain; and

(f) the transfer instruction was accepted by the ordering institution at or through a permanent establishment of the ordering institution in a foreign country; and

(g) the transfer instruction was passed on to the person by a permanent establishment of the ordering institution, or of another person, in a foreign country.

Keeping and retention of records

(2) The person must:

(a) make a record of so much of the required transfer information as was passed on to the person as mentioned in paragraph (1)(e); and

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(b) retain that record, or a copy of the record, for 7 years after the transfer instruction was passed on to the person.

Civil penalty

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

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Division 5—Records about anti-money laundering and counter-terrorism financing programs

116 Records about anti-money laundering and counter-terrorism financing programs

Scope

(1) This section applies to a reporting entity if the reporting entity adopts an anti-money laundering and counter-terrorism financing program that applies to the reporting entity.

Record of adoption

(2) The reporting entity must:
  (a) make a record of the adoption; and
  (b) retain the record, or a copy of the record, throughout the period:
    (i) beginning at the completion of the preparation of the record; and
    (ii) ending 7 years after the day on which the adoption ceases to be in force.

Retention of program etc.

(3) The reporting entity must retain the program, or a copy of the program, throughout the period:
  (a) beginning at the time of the adoption; and
  (b) ending 7 years after the day on which the adoption ceases to be in force.

(4) If the program is varied while the adoption is in force, the reporting entity must retain the variation, or a copy of the variation, throughout the period:
  (a) beginning at the time of the variation; and
  (b) ending 7 years after the day on which the adoption ceases to be in force.

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Civil penalty

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

Designated business groups

(6) If:

(a) a reporting entity is a member of a designated business group; and

(b) such other conditions (if any) as are specified in the AML/CTF Rules are satisfied;

the obligation imposed on the reporting entity by subsection (2), (3) or (4) may be discharged by any other member of the group.

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Division 6—Records about due diligence assessments of correspondent banking relationships

117 Retention of records of due diligence assessments of correspondent banking relationships

Scope

(1) This section applies to a financial institution if the financial institution prepared a record under subsection 97(2) or 98(2).

Retention

(2) The financial institution must retain the record, or a copy of the record, for 7 years after the completion of the preparation of the record.

Civil penalty

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

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Division 7—General provisions

118 Exemptions

(1) This Part (other than sections 109, 110, 115, 116 and 117) does not apply to a designated service that is of a kind specified in the AML/CTF Rules.

(2) The AML/CTF Rules may provide that a specified provision of this Part (other than sections 109, 110, 115, 116 and 117) does not apply to a designated service that is of a kind specified in the AML/CTF Rules.

(3) This Part (other than sections 109, 110, 115, 116 and 117) does not apply to a designated service that is provided in circumstances specified in the AML/CTF Rules.

(4) The AML/CTF Rules may provide that a specified provision of this Part (other than sections 109, 110, 115, 116 and 117) does not apply to a designated service that is provided in circumstances specified in the AML/CTF Rules.

(5) This Part (other than sections 109, 110, 115, 116 and 117) does not apply to a designated service that is provided by a reporting entity at or through a permanent establishment of the reporting entity in a foreign country.

119 This Part does not limit any other obligations

This Part does not limit any other obligation of a person to make records or retain documents.

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Part 11—Secrecy and access

Division 1—Introduction

120 Simplified outline

The following is a simplified outline of this Part:

- Except as permitted by this Act, an AUSTRAC official must not disclose information or documents obtained under this Act.
- A reporting entity must not disclose that it has:
    (a) reported, or is required to report, information to the AUSTRAC CEO under section 41; or
    (b) formed a suspicion, under section 41, about a transaction or matter.
- The Australian Taxation Office and certain other Australian government bodies may access AUSTRAC information.

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Division 2—Secrecy

121 Secrecy—AUSTRAC information and AUSTRAC documents

(1) This section restricts what a person (the ***entrusted public official***) who is or was:

(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) the Director of AUSTRAC; or

(f) a person engaged as a consultant under repealed section 40A of the *Financial Transaction Reports Act 1988*;

may do with AUSTRAC information or documents containing AUSTRAC information.

(2) The entrusted public official commits an offence if:

(a) the official has obtained AUSTRAC information (otherwise than under section 49 or Division 4); and

(b) the official discloses the information to another person.

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

(3) Each of the following is an exception to the prohibition in subsection (2):

(a) the disclosure is for the purposes of this Act or the *Financial Transaction Reports Act 1988*;

(b) the disclosure is for the purposes of the performance of the functions of the AUSTRAC CEO;

(c) the disclosure is otherwise in connection with the performance of the entrusted public official's duties under this Act or the *Financial Transaction Reports Act 1988*;

(d) the disclosure is in connection with giving another person covered by paragraph (1)(a), (b), (c) or (d) access to information for the purposes of, or in connection with:

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(i) the performance of the functions of the AUSTRAC CEO; or

(ii) the performance of the other person's duties under this Act or the *Financial Transaction Reports Act 1988*;

(da) the disclosure is for the purposes of, or in connection with, the performance of the Integrity Commissioner's functions relating to a corruption issue (within the meaning of the *Law Enforcement Integrity Commissioner Act 2006*) relating to any law enforcement agency (within the meaning of that Act);

(e) the disclosure is in connection with giving access to AUSTRAC information in accordance with Division 4.

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

(4) Except where it is necessary to do so for the purposes of giving effect to this Act or the *Financial Transaction Reports Act 1988*, the entrusted public official is not to be required:

(a) to produce to a court or tribunal a document containing AUSTRAC information; or

(b) to disclose AUSTRAC information to a court or tribunal.

(5) To avoid doubt, paragraph (2)(a) applies to AUSTRAC information obtained under subsection (3).

122 Secrecy—information obtained under section 49

(1) This section restricts what a person (the ***entrusted investigating official***) who is or was:

(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) the Commissioner of the Australian Federal Police; or

(f) the Chief Executive Officer of the Australian Crime Commission; or

(g) the Commissioner of Taxation; or

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(h) the Chief Executive Officer of Customs; or
(i) the Integrity Commissioner; or
(j) an investigating officer;

may do with section 49 information.

(2) The entrusted investigating official commits an offence if:
(a) the official has obtained section 49 information; and
(b) the official discloses the information to another person.

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

(3) Each of the following is an exception to the prohibition in subsection (2):
(a) the disclosure is for the purposes of this Act or the *Financial Transaction Reports Act 1988*;
(b) the disclosure is for the purposes of the performance of the functions of the AUSTRAC CEO;
(c) the disclosure is otherwise in connection with the performance of the entrusted investigating official's duties under this Act or the *Financial Transaction Reports Act 1988*;
(d) if the entrusted investigating official is covered by paragraph (1)(a), (b), (c) or (d)—the disclosure is in connection with giving another person covered by paragraph (1)(a), (b), (c) or (d) access to information for the purposes of, or in connection with:
(i) the performance of the functions of the AUSTRAC CEO; or
(ii) the performance of the other person's duties under this Act or the *Financial Transaction Reports Act 1988*;
(e) if the entrusted investigating official is the Commissioner of the Australian Federal Police—the disclosure is in connection with giving an AFP member access to information for the purposes of, or in connection with, the performance of the AFP member's duties;
(f) if the entrusted investigating official is the Chief Executive Officer of the Australian Crime Commission—the disclosure is in connection with giving:

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(i) an examiner of the Australian Crime Commission; or

(ii) a member of the staff of the Australian Crime Commission;

access to information for the purposes of, or in connection with, the performance of the examiner's duties or the member's duties, as the case may be;

(g) if the entrusted investigating official is the Commissioner of Taxation—the disclosure is in connection with giving a taxation officer access to information for the purposes of, or in connection with, the performance of the taxation officer's duties;

(h) if the entrusted investigating official is the Chief Executive Officer of Customs—the disclosure is in connection with giving a customs officer access to information for the purposes of, or in connection with, the performance of the customs officer's duties;

(i) if the entrusted investigating official is the Integrity Commissioner—the disclosure is in connection with giving an Australian Commission for Law Enforcement Integrity officer access to information for the purposes of, or in connection with, the performance of the Australian Commission for Law Enforcement Integrity officer's duties;

(j) the disclosure is in connection with giving another entrusted investigating official access to information for the purposes of, or in connection with, the performance of the other official's duties.

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

(4) Except where it is necessary to do so for the purposes of giving effect to this Act or the *Financial Transaction Reports Act 1988*, the entrusted investigating official is not to be required:

(a) to produce to a court or tribunal a document containing section 49 information; or

(b) to disclose section 49 information to a court or tribunal.

(5) ***Section 49 information*** is information obtained by the entrusted investigating official:

(a) under section 49; or

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(b) under subsection (3).

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Division 3—Disclosure of information

123 Offence of tipping off

Prohibitions

(1) If:

(a) a suspicious matter reporting obligation arises or has arisen for a reporting entity in relation to a person; and

(b) the reporting entity has communicated information to the AUSTRAC CEO under subsection 41(2);

the reporting entity must not disclose to someone other than the AUSTRAC CEO or a member of the staff of AUSTRAC that the information has been communicated to the AUSTRAC CEO.

Note 1: For ***suspicious matter reporting obligation***, see section 41.

Note 2: This subsection deals with the disclosure of information. It does not deal with the carrying out of applicable customer identification procedures.

(2) If:

(a) a suspicious matter reporting obligation arises or has arisen for a reporting entity in relation to a person; and

(b) either:

(i) the reporting entity has formed the applicable suspicion mentioned in subsection 41(1); or

(ii) the reporting entity has communicated information to the AUSTRAC CEO under subsection 41(2);

then:

(c) if subparagraph (b)(i) applies—the reporting entity must not disclose to someone other than the AUSTRAC CEO or a member of the staff of AUSTRAC:

(i) that the reporting entity has formed the applicable suspicion mentioned in subsection 41(1); or

(ii) any other information from which the person to whom the information is disclosed could reasonably be expected to infer that the suspicion had been formed; and

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(d) if subparagraph (b)(ii) applies—the reporting entity must not disclose to a person other than the AUSTRAC CEO or a member of the staff of AUSTRAC any other information from which the person to whom the information is disclosed could reasonably be expected to infer that information had been communicated to the AUSTRAC CEO under subsection 41(2).

Note 1: For ***suspicious matter reporting obligation***, see section 41.

Note 2: This subsection deals with the disclosure of information. It does not deal with the carrying out of applicable customer identification procedures.

(3) If a reporting entity is required under subsection 49(1) to give information, or produce a document, to a person, the reporting entity must not disclose to anyone else:

(a) that the reporting entity is or has been required to do so; or

(b) that the information has been given or the document has been produced; or

(c) any other information from which the person to whom the information is disclosed could reasonably be expected to infer that:

(i) the reporting entity had been required to give the first-mentioned information or produce the document; or

(ii) the first-mentioned information had been given; or

(iii) the document had been produced.

Exceptions

(4) Subsection (2) does not apply to the disclosure of information by a reporting entity if:

(a) the reporting entity is:

(i) a legal practitioner (however described); or

(ii) a partnership or company that carries on a business of using legal practitioners (however described) to supply professional legal services; or

(iii) a qualified accountant; or

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(iv) a partnership or company that carries on a business of using qualified accountants to supply professional accountancy services; or

(v) a person specified in the AML/CTF Rules; and

(b) the information relates to the affairs of a customer of the reporting entity; and

(c) the disclosure is made for the purposes of dissuading the customer from engaging in conduct that constitutes, or could constitute:

(i) evasion of a taxation law; or

(ii) evasion of a law of a State or Territory that deals with taxation; or

(iii) an offence against a law of the Commonwealth or of a State or Territory.

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

(5) Subsection (2) does not apply to the disclosure of information by a reporting entity if the disclosure is to a legal practitioner (however described) for the purpose of obtaining legal advice.

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

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

(6) Subsection (2) does not apply to the disclosure of information about the operation of Part 4 of the *Charter of the United Nations Act 1945*.

Note: A defendant bears an evidential burden in relation to the matter in subsection (6) (see subsection 13.3(3) of the *Criminal Code*).

(7) Subsection (2) does not apply to the disclosure of information by a reporting entity if:

(a) the reporting entity belongs to a designated business group; and

(b) the reporting entity has adopted a joint anti-money laundering and counter-terrorism financing program that:

(i) applies to the reporting entity; and

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(ii) relates to the designated business group; and

(c) the information relates to the affairs of a customer of the reporting entity; and

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

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

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 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 customer.

(7A) Subsection (2) does not apply to the disclosure of information by a reporting entity if:

(a) the reporting entity is a registered remittance affiliate of a registered remittance network provider and the disclosure is made to the registered remittance network provider; or

(b) the reporting entity is a registered remittance network provider and the disclosure is made to a registered remittance affiliate of the registered remittance network provider.

(7B) A reporting entity to whom information has been disclosed under subsection (7A) must not disclose the information to another person.

(8) Subsection (2) does not apply to the disclosure of information by a reporting entity if:

(a) the reporting entity is an ADI; and

(b) the disclosure is to an owner-managed branch of the ADI.

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

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(9) Subsection (2) does not apply to the disclosure of information by a reporting entity if:

(a) the disclosure is in compliance with a requirement under a law of the Commonwealth, a State or a Territory; or

(b) the disclosure is to an Australian government body that has responsibility for law enforcement.

Note: A defendant bears an evidential burden in relation to the matter in subsection (9) (see subsection 13.3(3) of the *Criminal Code*).

(10) 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 reporting entity is not to be required to disclose to a court or tribunal information mentioned in subsection (1), (2) or (3).

Offence

(11) A person commits an offence if:

(a) the person is subject to a requirement under subsection (1), (2), (3), (5A), (7AA), (7B) or (8A); and

(b) the person engages in conduct; and

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

Penalty for contravention of this subsection: Imprisonment for 2 years or 120 penalty units, or both.

124 Report and information not admissible

(1) In any court or tribunal proceedings:

(a) none of the following is admissible in evidence:

(i) a report given under, or prepared for the purposes of, subsection 41(2);

(ii) a copy of such a report;

(iii) a document purporting to set out information (including the formation or existence of a suspicion) contained in such a report;

(iv) a document given or produced under subsection 49(1), in so far as that subsection relates to a communication under section 41; and

(b) evidence is not admissible as to:

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(i) whether or not a report was prepared for the purposes of subsection 41(2); or

(ii) whether or not a report prepared for the purposes of subsection 41(2), or a document purporting to set out information (including the formation or existence of a suspicion) contained in such a report, was given to, or received by, the AUSTRAC CEO; or

(iii) whether or not particular information (including the formation or existence of a suspicion) was contained in a report prepared for the purposes of subsection 41(2); or

(iv) whether or not particular information (including the formation or existence of a suspicion) was given under subsection 49(1), in so far as that subsection relates to a communication under section 41; or

(v) whether or not a particular document was produced under subsection 49(1), in so far as that subsection relates to a communication under section 41.

(2) Subsection (1) does not apply to the following proceedings:

(a) criminal proceedings for an offence against section 123, 136 or 137;

(b) section 175 proceedings for a contravention of subsection 41(2) or 49(2).

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Division 4—Access to AUSTRAC information by agencies

Subdivision A—Access by the ATO to AUSTRAC information

125 Access by the ATO to AUSTRAC information

(1) The Commissioner of Taxation and any taxation officer is entitled to access to AUSTRAC information for any purpose relating to the facilitation of the administration or enforcement of a taxation law.

(2) An official of a designated agency may disclose AUSTRAC information to:

(a) the Commissioner of Taxation; or

(b) a taxation officer.

Application of Division 355 in Schedule 1 to the Taxation Administration Act 1953

(3) Division 355 in Schedule 1 to the *Taxation Administration Act 1953* applies in relation to AUSTRAC information obtained by the Commissioner of Taxation or a taxation officer under subsection (1) or (2) of this section as if a reference in that Division to a taxation law included a reference to this Act or the *Financial Transaction Reports Act 1988*.

Note: Division 355 in Schedule 1 to the *Taxation Administration Act 1953* deals with confidentiality of taxation information.

(4) Division 355 in Schedule 1 to the *Taxation Administration Act 1953* does not apply to the disclosure by the Commissioner of Taxation or a taxation officer of AUSTRAC information to an official of a designated agency for the purposes of, or in connection with, the performance of the official's duties in relation to the designated agency, so long as the official holds an appropriate authorisation under subsection 126(1).

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Subdivision B—Access by designated agencies to AUSTRAC information

126 Access by designated agencies to AUSTRAC information

(1) The AUSTRAC CEO may, in writing, authorise specified officials, or a specified class of officials, of a specified designated agency to have access to AUSTRAC information for the purposes of performing the agency's functions and exercising the agency's powers.

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

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

Limitations on AUSTRAC's power to authorise access by State or Territory agencies

(3) Despite subsection (1), the AUSTRAC CEO may specify a designated agency mentioned in any of paragraphs (p) to (x) of the definition of ***designated agency*** in section 5 only if the designated agency undertakes that it and its officials will comply with the Australian Privacy Principles in respect of AUSTRAC information obtained under:

(a) the authorisation; or

(b) subsection 128(2).

AUSTRAC information, or class of AUSTRAC information, to which access is authorised

(4) An authorisation under subsection (1) must state the AUSTRAC information, or the class of AUSTRAC information, to which the officials of the designated agency are to have access.

Treasury Department

(5) This Subdivision does not apply to a function or power of the Treasury Department unless the function or power relates to the

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Foreign Acquisitions and Takeovers Act 1975 or regulations under that Act.

(6) This Subdivision does not apply in relation to the duties of an official of the Treasury Department unless those duties relate to the *Foreign Acquisitions and Takeovers Act 1975* or regulations under that Act.

127 Dealings with AUSTRAC information once accessed

(1) This section restricts what a person (the ***entrusted agency official***) who is or was an official of a designated agency may do with accessed information.

(2) The entrusted agency official commits an offence if:
  (a) the official has obtained accessed information; and
  (b) the official discloses the information to another person.

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

(3) Each of the following is an exception to the prohibition in subsection (2):
  (a) the disclosure is for the purposes of, or in connection with, the performance of the official's duties;
  (b) the disclosure is authorised by, or is in connection with communicating AUSTRAC information under, subsection 125(2) or section 128, 132, 133, 133A, 133B or 133C.

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

(4) ***Accessed information*** is AUSTRAC information obtained by the entrusted agency official under any of the following provisions:
  (aa) paragraph 121(3)(da);
  (a) subsection 125(4);
  (b) section 126;
  (c) subsection 128(1) or (2);
  (d) subsection 132(2), (4), (5) or (7);
  (e) subsection 133(2) or 133A(2);

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(f) section 133B or 133C.

128 When AUSTRAC information can be passed on by an official of a designated agency

Other officials of the same agency

(1) An official of a designated agency may disclose AUSTRAC information to another official of the agency for the purposes of, or in connection with, the performance of the other official's duties in relation to the agency.

Officials of another designated agency

(2) An official of a designated agency may disclose AUSTRAC information to another official of another designated agency for the purposes of, or in connection with, the performance of the other official's duties in relation to the other designated agency, so long as the other official holds an appropriate authorisation under subsection 126(1).

Note: For disclosure to the Commissioner of Taxation and taxation officers, see subsection 125(2).

Court or tribunal proceedings etc.

(3) An official of a designated agency may:
(a) disclose AUSTRAC information to a person for the purposes of, or in connection with:
(i) court or tribunal proceedings; or
(ii) proposed or possible court or tribunal proceedings; or
(iii) obtaining legal advice; or
(b) disclose AUSTRAC information in the course of court or tribunal proceedings.

(4) Subsection (3) does not apply to AUSTRAC information that:
(a) was obtained under section 41; or
(b) was obtained under section 49, in so far as that section relates to a communication under section 41; or

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(c) was obtained under section 16 of the *Financial Transaction Reports Act 1988*.

(5) A person to whom AUSTRAC information has been disclosed under paragraph (3)(a) must not disclose the information to another person.

(6) Subsection (5) 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

(iii) obtaining or giving the legal advice;

as the case may be; or

(b) the disclosure is authorised by this Division.

Note: A defendant bears an evidential burden in relation to the matter in subsection (6) (see subsection 13.3(3) of the *Criminal Code*).

(7) A person commits an offence if:

(a) the person is subject to a requirement under subsection (5); and

(b) the person engages in conduct; and

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

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

Investigations

(8) An official of a designated agency may disclose AUSTRAC information to a person for the purposes of, or in connection with, an investigation or a proposed or possible investigation.

(9) Subsection (8) does not apply to AUSTRAC information that:

(a) was obtained under section 41; or

(b) was obtained under section 49, in so far as that section relates to a communication under section 41; or

(c) was obtained under section 16 of the *Financial Transaction Reports Act 1988*.

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

(11) Subsection (10) does not apply if the disclosure is for the purposes of, or in connection with:

(a) the investigation or the proposed or possible investigation; or

(b) court or tribunal proceedings, or any proposed or possible court or tribunal proceedings, connected with the investigation or proposed or possible investigation.

Note: A defendant bears an evidential burden in relation to the matter in subsection (11) (see subsection 13.3(3) of the *Criminal Code*).

(12) A person commits an offence if:

(a) the person is subject to a requirement under subsection (10); and

(b) the person engages in conduct; and

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

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

ASIS officials

(12A) The following provisions have effect:

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

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

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

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

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ASIO officials

(13) The following provisions have effect:

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

(b) an ASIO official may disclose AUSTRAC information to the ASIO Minister if the disclosure is for the purposes of, or in connection with:

(i) the performance of the ASIO Minister's functions under the *Australian Security Intelligence Organisation Act 1979*; or

(ii) security (within the meaning of that Act);

(c) an ASIO official may disclose AUSTRAC information to the Minister responsible for the administration of the *Telecommunications (Interception and Access) Act 1979* if the disclosure is for the purposes of, or in connection with, the performance of that Minister's functions under that Act;

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

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

Defence intelligence officials

(13B) The following provisions have effect:

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

(b) an official of a defence intelligence agency may disclose AUSTRAC information to the Defence Minister if the disclosure is for the purposes of, or in connection with, the

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performance of the Defence Minister's responsibilities in relation to the defence intelligence agency;

(c) an official of a defence intelligence agency may disclose AUSTRAC information to the Minister responsible for the administration of the *Telecommunications (Interception and Access) Act 1979* if the disclosure is for the purposes of, or in connection with, the performance of that Minister's functions under that Act;

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

ONA officials

(13C) The following provisions have effect:

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

(b) an official of ONA may disclose AUSTRAC information to the Minister responsible for the administration of the *Telecommunications (Interception and Access) Act 1979* if the disclosure is for the purposes of, or in connection with, the performance of that Minister's functions under that Act;

(c) an official of ONA may disclose AUSTRAC information to the Prime Minister if the disclosure is for the purposes of, or in connection with, the performance of the Prime Minister's responsibilities in relation to ONA.

(13D) Subsections (13B) and (13C) do not limit the generality of any other provision of this section.

Australian Crime Commission officials

(14) The following provisions have effect:

(a) the Chief Executive Officer of the Australian Crime Commission may, in a manner that does not identify, and is

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not reasonably capable of being used to identify, a person to whom AUSTRAC information relates, communicate the information to the Board of the Australian Crime Commission;

(b) the Chair of the Board of the Australian Crime Commission may, in a manner that does not identify, and is not reasonably capable of being used to identify, a person to whom AUSTRAC information relates, communicate the information to the Inter-Governmental Committee in a report by the Chair under subsection 59(4) of the *Australian Crime Commission Act 2002*;

(c) the Chief Executive Officer of the Australian Crime Commission may, in a manner that does not identify, and is not reasonably capable of being used to identify, a person to whom AUSTRAC information relates, communicate the information to the Parliamentary Joint Committee on Law Enforcement under subsection 8(1) of the *Parliamentary Joint Committee on Law Enforcement Act 2010*;

(d) the Chief Executive Officer of the Australian Crime Commission may communicate AUSTRAC information to an examiner of the Australian Crime Commission who is conducting an examination under Division 2 of Part II of the *Australian Crime Commission Act 2002*;

(e) an examiner of the Australian Crime Commission may disclose AUSTRAC information in the course of such an examination before the examiner;

(f) a member of the staff of the Australian Crime Commission may disclose AUSTRAC information for the purposes of, or in connection with, the performance of the staff member's duties in relation to the Australian Crime Commission.

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

Disclosure to responsible Ministers

(15) If a designated agency is established by law of the Commonwealth, an official of the agency may disclose AUSTRAC information to the Minister responsible for the administration of so much of that

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law as relates to the agency if the disclosure is for the purposes of, or in connection with, the performance of the Minister's responsibilities in relation to the agency.

(16) If a designated agency is a Department of the Commonwealth, an official of the agency may disclose AUSTRAC information to the Minister responsible for the agency if the disclosure is for the purposes of, or in connection with, the performance of the Minister's responsibilities in relation to the agency.

(17) If a designated agency is established by law of a State or Territory, an official of the agency may disclose AUSTRAC information to the State or Territory Minister responsible for the administration of so much of that law as relates to the agency if the disclosure is for the purposes of, or in connection with, the performance of the State or Territory Minister's responsibilities in relation to the agency.

(18) If a designated agency is a Department of a State or Territory, an official of the agency may disclose AUSTRAC information to the State or Territory Minister responsible for the agency if the disclosure is for the purposes of, or in connection with, the performance of the State or Territory Minister's responsibilities in relation to the agency.

IGIS officials

(19) An IGIS official may:

(a) disclose AUSTRAC information to another IGIS official for the purposes of, or in connection with, the performance of that official's duties in relation to the following designated agencies, or employees of the following designated agencies:

(i) ASIO;

(ii) ASIS;

(iii) a defence intelligence agency;

(iv) ONA;

(v) any other Commonwealth agency (within the meaning of the *Inspector-General of Intelligence and Security Act 1986*); or

(b) disclose AUSTRAC information by means of including the information in a draft report, or a report, under Division 4 of

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the *Inspector-General of Intelligence and Security Act 1986*; or

(c) disclose AUSTRAC information under section 23 of the *Inspector-General of Intelligence and Security Act 1986*; or

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

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

Subdivision C—Access by non-designated Commonwealth agencies to AUSTRAC information

129 Access by non-designated Commonwealth agencies to AUSTRAC information

(1) If an official of a non-designated Commonwealth agency makes an application to the AUSTRAC CEO for access to AUSTRAC information for the purposes of:

(a) an investigation of a possible breach of a law of the Commonwealth; or

(b) a proposed investigation of a possible breach of a law of the Commonwealth;

the AUSTRAC CEO may, in writing, authorise the official to have access to AUSTRAC information for those purposes.

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

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

AUSTRAC information, or class of AUSTRAC information, to which access is authorised

(3) An authorisation under subsection (1) must state the AUSTRAC information, or the class of AUSTRAC information, to which the official of the non-designated Commonwealth agency is to have access.

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130 Dealings with AUSTRAC information once accessed

(1) This section restricts what a person (the ***entrusted Commonwealth agency official***) who is or was an official of a non-designated Commonwealth agency may do with accessed information.

(2) The entrusted Commonwealth agency official commits an offence if:

(a) the official has obtained accessed information; and

(b) the official discloses the information to another person.

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

(3) Each of the following is an exception to the prohibition in subsection (2):

(a) the disclosure:

(i) is for the purposes of, or in connection with, the performance of the official's duties in connection with the investigation or proposed investigation concerned; and

(ii) is to a person who has given a written undertaking as set out in subsection (3AA) to the entrusted Commonwealth agency official about the information;

(b) the disclosure is in connection with communicating AUSTRAC information under section 131.

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

(3AA) The undertaking is that the recipient and its officials (if any) will comply with the Australian Privacy Principles in respect of AUSTRAC information obtained under paragraph (3)(a).

(3A) Paragraph (3)(a) does not apply to AUSTRAC information that:

(a) was obtained under section 41; or

(b) was obtained under section 49, in so far as that section relates to a communication under section 41; or

(c) was obtained under section 16 of the *Financial Transaction Reports Act 1988*.

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(4) ***Accessed information*** is AUSTRAC information obtained by the entrusted Commonwealth agency official under subsection 129(1) or 131(2).

131 When AUSTRAC information can be passed on by an official of a non-designated Commonwealth agency

Scope

(1) This section applies if AUSTRAC information is disclosed to an official of a non-designated Commonwealth agency for the purposes of an investigation or proposed investigation.

Disclosure to other officials of the same agency

(2) The official may disclose the AUSTRAC information to another official of the agency for the purposes of, or in connection with, the performance of the other official's duties in relation to the investigation or proposed investigation.

Disclosure for the purposes of court or tribunal proceedings

(3) The official may disclose the AUSTRAC information to a person for the purposes of, or in connection with, court or tribunal proceedings, or proposed or possible court or tribunal proceedings, connected with the investigation or proposed investigation.

(3A) Subsection (3) does not apply to AUSTRAC information that:

(a) was obtained under section 41; or

(b) was obtained under section 49, in so far as that section relates to a communication under section 41; or

(c) was obtained under section 16 of the *Financial Transaction Reports Act 1988*.

(4) A person to whom AUSTRAC information has been disclosed under subsection (3) must not disclose the information to another person.

(5) Subsection (4) does not apply if the disclosure is for the purposes of, or in connection with, the court or tribunal proceedings or the proposed or possible court or tribunal proceedings.

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

(6) A person commits an offence if:
  (a) the person is subject to a requirement under subsection (4); and
  (b) the person engages in conduct; and
  (c) the person's conduct breaches the requirement.

Penalty for contravention of this subsection: Imprisonment for 2 years or 120 penalty units, or both.

Subdivision D—Communication of AUSTRAC information to foreign countries etc.

132 Communication of AUSTRAC information to a foreign country etc.

Foreign country

(1) The AUSTRAC CEO may communicate AUSTRAC information to the government of a foreign country if the AUSTRAC CEO is satisfied that:
  (a) the government of the foreign country has given appropriate undertakings for:
    (i) protecting the confidentiality of the information; and
    (ii) controlling the use that will be made of it; and
    (iii) ensuring that the information will be used only for the purpose for which it is communicated to the government of the foreign country; and
  (b) it is appropriate, in all the circumstances of the case, to communicate the information to the government of the foreign country.

Foreign law enforcement agency—access by Commissioner of the Australian Federal Police to AUSTRAC information

(2) The AUSTRAC CEO may, in writing, authorise the Commissioner of the Australian Federal Police to have access to AUSTRAC

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information for the purposes of communicating the information to a foreign law enforcement agency under subsection (3).

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

When the Commissioner of the Australian Federal Police may communicate AUSTRAC information to a foreign law enforcement agency

(3) The Commissioner of the Australian Federal Police may communicate AUSTRAC information to a foreign law enforcement agency if the Commissioner is satisfied that:

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

(i) protecting the confidentiality of the information; and

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

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

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

(4) The Commissioner of the Australian Federal Police may, in writing, authorise a member of the Australian Federal Police to access the AUSTRAC information and communicate it to the foreign law enforcement agency on behalf of the Commissioner.

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

Foreign law enforcement agency—access by Chief Executive Officer of the Australian Crime Commission to AUSTRAC information

(5) The AUSTRAC CEO may, in writing, authorise the Chief Executive Officer of the Australian Crime Commission to have access to AUSTRAC information for the purposes of communicating the information to a foreign law enforcement agency under subsection (6).

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

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When the Chief Executive Officer of the Australian Crime Commission may communicate AUSTRAC information to a foreign law enforcement agency

(6) The Chief Executive Officer of the Australian Crime Commission may communicate AUSTRAC information to a foreign law enforcement agency if the Chief Executive Officer of the Australian Crime Commission is satisfied that:

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

(i) protecting the confidentiality of the information; and

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

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

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

(7) The Chief Executive Officer of the Australian Crime Commission may, in writing, authorise a member of the staff of the Australian Crime Commission to access the AUSTRAC information and communicate it to the foreign law enforcement agency on behalf of the Chief Executive Officer of the Australian Crime Commission.

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

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

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

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

(i) protecting the confidentiality of the information; and

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

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

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

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

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

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

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

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

(i) protecting the confidentiality of the information; and

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

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

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

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

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

133B When the Director of a defence intelligence agency may communicate AUSTRAC information to a foreign intelligence agency

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

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

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(i) protecting the confidentiality of the information; and

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

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

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

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

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

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

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

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

(i) protecting the confidentiality of the information; and

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

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

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

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

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

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Division 5—Use of AUSTRAC information in court or tribunal proceedings

134 Use of AUSTRAC information in court or tribunal proceedings

A person who obtains AUSTRAC information is not to be required:

(a) to produce in a court or tribunal a document containing AUSTRAC information; or

(b) to disclose to any court or tribunal any AUSTRAC information;

except where it is necessary to do so for the purposes of carrying into effect the provisions of this Act or the *Financial Transaction Reports Act 1988*.

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Part 12—Offences

135 Simplified outline

The following is a simplified outline of this Part:

- It is an offence to:
  - (a) produce false or misleading information; or
  - (b) produce a false or misleading document; or
  - (c) forge a document for use in an applicable customer identification procedure; or
  - (d) provide or receive a designated service using a false customer name or customer anonymity; or
  - (e) structure a transaction to avoid a reporting obligation under this Act.

136 False or misleading information

(1) A person commits an offence if:

(a) the person gives information to:

(i) the AUSTRAC CEO; or

(ii) an authorised officer; or

(iii) a customs officer; or

(iv) a police officer; or

(v) a reporting entity; or

(vi) a person acting on a reporting entity's behalf; and

(b) the person does so knowing that the information:

(i) is false or misleading; or

(ii) omits any matter or thing without which the information is misleading; and

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(c) the information is given, or purportedly given, under:
(i) this Act; or
(ii) a provision of the regulations or of the AML/CTF Rules, if the regulations or Rules (as applicable) state that this section applies to that provision.

Penalty: Imprisonment for 10 years or 10,000 penalty units, or both.

(2) Subsection (1) does not apply as a result of subparagraph (1)(b)(i) if the information is not false or misleading in a material particular.

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

(3) Subsection (1) does not apply as a result of subparagraph (1)(b)(ii) if the information did not omit any matter or thing without which the information is misleading in a material particular.

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

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

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

137 Producing false or misleading documents

(1) A person commits an offence if:
(a) the person produces a document to:
(i) the AUSTRAC CEO; or
(ii) an authorised officer; or
(iii) a customs officer; or
(iv) a police officer; or
(v) a reporting entity; or
(vi) a person acting on a reporting entity's behalf; and
(b) the person does so knowing that the document is false or misleading; and
(c) the document is produced, or purportedly produced, under:
(i) this Act; or

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(ii) a provision of the regulations or of the AML/CTF Rules, if the regulations or Rules (as applicable) state that this section applies to that provision.

Penalty: Imprisonment for 10 years or 10,000 penalty units, or both.

(2) Subsection (1) does not apply if the document is not false or misleading in a material particular.

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

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

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

138 False documents

Making a false document

(1) A person commits an offence if:

(a) the person makes a false document with the intention that the person or another will produce the false document in the course of an applicable customer identification procedure; and

(b) the applicable customer identification procedure is under this Act.

Penalty: Imprisonment for 10 years or 10,000 penalty units, or both.

(2) In a prosecution for an offence against subsection (1), it is not necessary to prove that the defendant knew that the applicable customer identification procedure is under this Act.

Possessing a false document

(3) A person commits an offence if:

(a) the person knows that a document is a false document; and

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(b) the person has it in his or her possession with the intention that the person or another will produce it in the course of an applicable customer identification procedure; and

(c) the applicable customer identification procedure is under this Act.

Penalty: Imprisonment for 10 years or 10,000 penalty units, or both.

(4) In a prosecution for an offence against subsection (3), it is not necessary to prove that the defendant knew that the applicable customer identification procedure is under this Act.

Possessing equipment for making a false document

(5) A person commits an offence if the person:

(a) knows that a device, material or other thing is designed or adapted for the making of a false document (whether or not the device, material or thing is designed or adapted for another purpose); and

(b) has the device, material or thing in his or her possession with the intention that the person or another person will use it to commit an offence against subsection (1).

Penalty: Imprisonment for 10 years or 10,000 penalty units, or both.

Making equipment for making a false document

(6) A person commits an offence if the person:

(a) makes or adapts a device, material or other thing; and

(b) knows that the device, material or other thing is designed or adapted for the making of a false document (whether or not the device, material or thing is designed or adapted for another purpose); and

(c) makes or adapts the device, material or thing with the intention that the person or another person will use it to commit an offence against subsection (1).

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Penalty: Imprisonment for 10 years or 10,000 penalty units, or both.

Interpretation

(7) An expression used in this section that is also used in Part 7.7 of the *Criminal Code* has the same meaning as in that Part.

Note: See also section 10.5 of the *Criminal Code* (lawful authority).

139 Providing a designated service using a false customer name or customer anonymity

(1) A person commits an offence if:

(a) the person is a reporting entity; and

(b) the person commences to provide a designated service; and

(c) the person does so using a false customer name; and

(d) at least one provision of Division 2, 3 or 4 of Part 2 applies to the provision of the designated service.

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

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

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

(2A) Paragraph (1)(c) does not apply to a false customer name if the customer's use of that name is justified, or excused, by or under a law.

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

(3) A person commits an offence if:

(a) the person is a reporting entity; and

(b) the person commences to provide a designated service; and

(c) the person does so on the basis of customer anonymity; and

(d) at least one provision of Division 2, 3 or 4 of Part 2 applies to the provision of the designated service.

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

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

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

140 Receiving a designated service using a false customer name or customer anonymity

(1) A person commits an offence if:

(a) the person commences to receive a designated service; and

(b) the person does so using a false customer name; and

(c) at least one provision of Division 2, 3 or 4 of Part 2 applies to the provision of the designated service.

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

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

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

(3) A person commits an offence if:

(a) the person commences to receive a designated service; and

(b) the person does so on the basis of customer anonymity; and

(c) at least one provision of Division 2, 3 or 4 of Part 2 applies to the provision of the designated service.

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

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

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

141 Customer commonly known by 2 or more different names—disclosure to reporting entity

(1) A person commits an offence if:

(a) the person commences to receive a designated service provided by a reporting entity; and

(b) the person is commonly known by 2 or more different names; and

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(c) the person commences to receive the designated service using one of those names; and

(d) the person has not previously disclosed the other name or names to the reporting entity; and

(e) at least one provision of Division 2, 3 or 4 of Part 2 applies to the provision of the designated service.

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

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

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

142 Conducting transactions so as to avoid reporting requirements relating to threshold transactions

(1) A person (the ***first person***) commits an offence if:

(a) the first person is, or causes another person to become, a party to 2 or more non-reportable transactions; and

(b) having regard to:

(i) the manner and form in which the transactions were conducted, including the matters to which subsection (3) applies; and

(ii) any explanation made by the first person as to the manner or form in which the transactions were conducted;

it would be reasonable to conclude that the first person conducted, or caused the transactions to be conducted, in that manner or form for the sole or dominant purpose of ensuring, or attempting to ensure, that the money or property involved in the transactions was transferred in a manner and form that would not give rise to a threshold transaction that would have been required to have been reported under section 43.

Penalty: Imprisonment for 5 years or 300 penalty units, or both.

(2) Subsection (1) does not apply if the defendant proves that the first person did not conduct the transactions, or cause the transactions to be conducted, as the case may be, for the sole or dominant purpose

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of ensuring, or attempting to ensure, that the money or property involved in the transactions was transferred in a manner and form that would not give rise to a threshold transaction that would have been required to have been reported under section 43.

Note: A defendant bears a legal burden in relation to the matters in subsection (2)—see section 13.4 of the *Criminal Code*.

(3) This subsection applies to the following matters:

(a) the value of the money or property involved in each transaction;

(b) the total value of the transactions;

(c) the period of time over which the transactions took place;

(d) the interval of time between any of the transactions;

(e) the locations at which the transactions took place.

143 Conducting transfers so as to avoid reporting requirements relating to cross-border movements of physical currency

(1) A person (the ***first person***) commits an offence if:

(a) the first person conducts, or causes another person to conduct, 2 or more non-reportable cross-border movements of physical currency; and

(b) having regard to:

(i) the manner and form in which the movements were conducted, including the matters to which subsection (3) applies; and

(ii) any explanation made by the first person as to the manner or form in which the movements were conducted;

it would be reasonable to conclude that the first person conducted the movements, or caused the movements to be conducted, as the case may be, in that manner or form for the sole or dominant purpose of ensuring, or attempting to ensure, that no report in relation to the physical currency involved in the movements would be made under section 53.

Penalty: Imprisonment for 5 years or 300 penalty units, or both.

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(2) Subsection (1) does not apply if the defendant proves that the first person did not conduct the movements, or cause the movements to be conducted, as the case may be, for the sole or dominant purpose of ensuring, or attempting to ensure, that no report in relation to the physical currency involved in the movements would be made under section 53.

Note: A defendant bears a legal burden in relation to the matters in subsection (2)—see section 13.4 of the *Criminal Code*.

(3) This subsection applies to the following matters:

(a) the total amount of the physical currency involved in each movement;

(b) the total amount of the physical currency involved in the movements;

(c) the period of time over which the movements occurred;

(d) the interval of time between any of the movements;

(e) the locations at which the movements were initiated or conducted.

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Part 13—Audit

Division 1—Introduction

144 Simplified outline

The following is a simplified outline of this Part:

- An authorised officer may enter any reporting entity business premises:
    - (a) with the occupier's consent; or
    - (b) under a monitoring warrant.
- An authorised officer who enters any reporting entity business premises may exercise monitoring powers.
- The AUSTRAC CEO may require a reporting entity to carry out an external audit or a money laundering and terrorism financing risk assessment.

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Division 2—Appointment of authorised officers and issue of identity cards

145 Appointment of authorised officers

(1) The AUSTRAC CEO may, in writing, appoint as an authorised officer for the purposes of this Act:

(a) a member of the staff of AUSTRAC; or

(b) a person whose services are made available to the AUSTRAC CEO under subsection 225(3), other than a person covered by paragraph 225(3)(g).

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

(2) The AUSTRAC CEO must not appoint a person to be an authorised officer unless the person satisfies the conditions (if any) specified in the regulations.

(3) In exercising powers or performing functions as an authorised officer, an authorised officer must comply with any directions of the AUSTRAC CEO.

146 Identity cards

(1) The AUSTRAC CEO must issue an identity card to an authorised officer.

(2) The identity card must

(a) be in a form approved in writing by the AUSTRAC CEO; and

(b) contain a recent photograph of the authorised officer.

(3) A person commits an offence if:

(a) the person has been issued with an identity card; and

(b) the person ceases to be an authorised officer; and

(c) the person does not, within 3 business days after so ceasing, return the identity card to the AUSTRAC CEO.

Penalty: 1 penalty unit.

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(4) Subsection (3) does not apply if the person has a reasonable excuse.

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

(5) An authorised officer must carry the identity card at all times when exercising powers or performing functions as an authorised officer under this Part.

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Division 3—Powers of authorised officers

Subdivision A—Monitoring powers

147 Authorised officer may enter premises by consent or under a monitoring warrant

(1) For the purposes of determining whether the provisions of this Act, the regulations or the AML/CTF Rules have been complied with, an authorised officer may:

(a) enter any reporting entity business premises at any reasonable time of the day; and

(b) exercise the monitoring powers set out in section 148.

(2) An authorised officer is not authorised to enter premises under subsection (1) unless:

(a) the occupier of the premises has consented to the entry and the officer has shown his or her identity card if required by the occupier; or

(b) the entry is made under a monitoring warrant.

Note: Monitoring warrants are issued under section 159.

(3) If an authorised officer is on the premises with the consent of the occupier, the authorised officer must leave the premises if the occupier asks the authorised officer to do so.

148 Monitoring powers of authorised officers

(1) For the purposes of this Act, the following are the ***monitoring powers*** that an authorised officer may exercise, in relation to premises, under section 147:

(a) the power to search the premises for any compliance records that:

(i) are kept at, or accessible from, the premises; and

(ii) relate to a reporting entity;

(b) the power to search the premises for any system used by a reporting entity at the premises for keeping those records;

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(c) the power to search the premises for any reports under this Act that are retained at, or accessible from, the premises;

(d) the power to search the premises for any system used by a reporting entity in connection with:

(i) preparing reports under this Act; or

(ii) sending such reports to the AUSTRAC CEO; or

(iii) retaining such reports;

(e) the power to search the premises for any other thing on the premises that may be relevant to the obligations of a reporting entity under this Act, the regulations or the AML/CTF Rules;

(f) the power to examine any activity conducted on the premises that may relate to information provided under this Act, the regulations or the AML/CTF Rules;

(g) the power to examine any thing on the premises that may relate to information provided under this Act, the regulations or the AML/CTF Rules;

(h) the power to take photographs or make video or audio recordings or sketches on the premises of any such activity or thing;

(i) the power to inspect any document on the premises that may relate to information provided under this Act, the regulations or the AML/CTF Rules;

(j) the power to take extracts from, or make copies of, any such document;

(k) the power to take onto the premises such equipment and materials as the authorised officer requires for the purpose of exercising powers in relation to the premises;

(l) the powers set out in subsections (2), (3) and (4).

(2) For the purposes of this Act, ***monitoring powers*** include the power to secure a thing for no more than 24 hours if:

(a) the thing is found during the exercise of monitoring powers on the premises; and

(b) an authorised officer believes on reasonable grounds that:

(i) the thing affords evidence of the commission of an offence against this Act or the regulations, or evidence

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of the commission of an offence against the *Crimes Act 1914* or the *Criminal Code* that relates to this Act or the regulations; and

(ii) it is necessary to secure the thing in order to prevent it from being concealed, lost or destroyed before a warrant to seize the thing is obtained; and

(iii) the circumstances are serious and urgent.

(3) For the purposes of this Act, ***monitoring powers*** include the power to operate equipment at the premises to see whether:

(a) the equipment; or

(b) a data storage device that:

(i) is at the premises; and

(ii) can be used with the equipment or is associated with it;

contains information that is relevant to assessing the correctness of information provided under this Act.

(4) For the purposes of this Act, ***monitoring powers*** include the following powers in relation to information described in subsection (3) found in the exercise of the power under that subsection:

(a) the power to operate facilities at the premises to put the information in documentary form and copy the documents so produced;

(b) the power to operate facilities at the premises to transfer the information to a disk, tape or other storage device that:

(i) is brought to the premises for the exercise of the power; or

(ii) is at the premises and the use of which for the purpose has been agreed in writing by the occupier of the premises;

(c) the power to remove from the premises a disk, tape or other storage device to which the information has been transferred in exercise of the power under paragraph (b).

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149 Tampering or interfering with things secured in the exercise of monitoring powers

A person commits an offence if:

(a) a thing has been secured by an authorised officer in the exercise of the monitoring powers set out in section 148; and

(b) the person tampers or interferes with the thing.

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

Subdivision B—Powers of authorised officers to ask questions and seek production of documents

150 Authorised officer may ask questions and seek production of documents

(1) If the authorised officer was authorised to enter premises because the occupier of the premises consented to the entry, the authorised officer may ask the occupier to:

(a) answer any questions relating to the operation of this Act, the regulations or the AML/CTF Rules that are put by the authorised officer; and

(b) produce any document relating to the operation of this Act, the regulations or the AML/CTF Rules that is requested by the authorised officer.

(2) If the authorised officer was authorised to enter the premises by a monitoring warrant, the authorised officer may require any person in or on the premises to:

(a) answer any questions relating to the operation of this Act, the regulations or the AML/CTF Rules that are put by the authorised officer; and

(b) produce any document relating to the operation of this Act, the regulations or the AML/CTF Rules that is requested by the authorised officer.

Note: Monitoring warrants are issued under section 159.

(3) A person commits an offence if:

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(a) the person is subject to a requirement under subsection (2); and
(b) the person engages in conduct; and
(c) the person's conduct breaches the requirement.

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

Self-incrimination

(4) A person is not excused from answering a question or producing a document under subsection (2) on the ground that the answering of the question or the production of the document might tend to incriminate the person or expose the person to a penalty.

(5) However:
(a) the answer given or the document produced; or
(b) answering the question or producing the document;
is not admissible in evidence against the person:
(c) in civil proceedings other than proceedings under the *Proceeds of Crime Act 2002* that relate to this Act; or
(d) in criminal proceedings other than:
(i) proceedings for an offence against subsection (3); or
(ii) proceedings for an offence against section 136 or 137 that relates to this section; or
(iii) proceedings for an offence against section 137.1 or 137.2 of the *Criminal Code* that relates to this section.

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Division 4—Obligations and incidental powers of authorised officers

151 Authorised officer must produce identity card on request

An authorised officer is not entitled to exercise any powers under this Part in relation to premises if:

(a) the occupier of the premises requires the authorised officer to produce his or her identity card for inspection by the occupier; and

(b) the authorised officer fails to comply with the requirement.

152 Consent

(1) Before obtaining the consent of a person for the purposes of paragraph 147(2)(a), the authorised officer must inform the person that he or she may refuse consent.

(2) An entry of an authorised officer because of the consent of a person is not lawful unless the person voluntarily consented to the entry.

(3) The consent may be expressed to be limited to entry during a particular period unless the consent is withdrawn before the end of that period.

(4) A consent that is not limited as mentioned in subsection (3) has effect until the consent is withdrawn.

(5) If an authorised officer entered premises because of the consent of a person, the authorised officer must leave the premises if the person withdraws the consent.

153 Announcement before entry

An authorised officer executing a monitoring warrant must, before entering premises under the warrant:

(a) announce that he or she is authorised to enter the premises; and

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(b) give any person at the premises an opportunity to allow entry to the premises.

Note: Monitoring warrants are issued under section 159.

154 Details of monitoring warrant to be given to occupier etc. before entry

(1) If:

(a) a monitoring warrant is being executed in relation to premises; and

(b) either:

(i) the occupier of the premises is present at the premises; or

(ii) the occupier of the premises is not present at the premises, but another person who apparently represents the occupier is present at the premises;

the authorised officer must make a copy of the warrant available to:

(c) if subparagraph (b)(i) applies—the occupier of the premises; or

(d) if subparagraph (b)(ii) applies—the person who apparently represents the occupier.

(2) The authorised officer must identify himself or herself to that person.

(3) The copy of the warrant mentioned in subsection (1) need not include the signature of the magistrate who issued the warrant.

Note: Monitoring warrants are issued under section 159.

155 Use of electronic equipment in exercising monitoring powers

(1) This section applies to the following premises:

(a) premises that an authorised officer has entered, and remains on, with the consent of the occupier;

(b) warrant premises.

(2) An authorised officer or a person assisting that officer may operate electronic equipment already at the premises in order to exercise

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monitoring powers if he or she believes, on reasonable grounds, that the operation of the equipment can be carried out without damage to the equipment.

(3) If the authorised officer or a person assisting believes, on reasonable grounds, that:

(a) there is on the premises material relating to information provided under this Act, the regulations or the AML/CTF Rules that may be accessible by operating electronic equipment on the premises; and

(b) expert assistance is required to operate the equipment; and

(c) if he or she does not take action under this subsection, the material may be destroyed, altered or otherwise interfered with;

he or she may do whatever is necessary to secure the equipment, whether by locking it up, placing a guard, or otherwise.

(4) The authorised officer or a person assisting must give notice to the occupier of the premises of his or her intention to secure equipment and of the fact that the equipment may be secured for up to 24 hours.

(5) The equipment may be secured:

(a) for a period not exceeding 24 hours; or

(b) until the equipment has been operated by the expert;

whichever first happens.

(6) If an authorised officer or a person assisting believes, on reasonable grounds, that the expert assistance will not be available within 24 hours, he or she may apply to a magistrate for an extension of the period.

(7) The authorised officer or a person assisting must give notice to the occupier of the premises of his or her intention to apply for an extension. The occupier is entitled to be heard in relation to that application.

(8) The provisions of this Part relating to the issue of monitoring warrants apply, with such modifications as are necessary, to the issue of an extension.

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156 Compensation for damage to electronic equipment

(1) This section applies if:

(a) as a result of electronic equipment being operated as mentioned in section 155:

(i) damage is caused to the equipment; or

(ii) the data recorded on the equipment is damaged; or

(iii) programs associated with the use of the equipment, or with the use of the data, are damaged or corrupted; and

(b) the damage or corruption occurs because:

(i) insufficient care was exercised in selecting the person who was to operate the equipment; or

(ii) insufficient care was exercised by the person operating the equipment.

(2) The Commonwealth must pay the owner of the equipment, or the user of the data or programs, such reasonable compensation for the damage or corruption as the Commonwealth and the owner or user agree on.

(3) However, if the owner or user and the Commonwealth fail to agree, the owner or user may institute proceedings in the Federal Court for such reasonable amount of compensation as the Court determines.

(4) In determining the amount of compensation payable under subsection (3), regard is to be had to whether the occupier of the premises, or the occupier's employees and agents, if they were available at the time, provided any appropriate warning or guidance on the operation of the equipment.

(5) Compensation is payable out of money appropriated by the Parliament.

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Division 5—Occupier's rights and responsibilities

157 Occupier entitled to be present during execution of monitoring warrant

(1) If:

(a) a monitoring warrant is being executed; and

(b) the occupier of the warrant premises, or another person who apparently represents the occupier, is present at the premises;

the person is entitled to observe the execution of the warrant.

(2) The right to observe the execution of the warrant ceases if the person impedes that execution.

(3) This section does not prevent the execution of the warrant in 2 or more areas of the premises at the same time.

Note: Monitoring warrants are issued under section 159.

158 Occupier to provide authorised officer with facilities and assistance

(1) The occupier of warrant premises, or another person who apparently represents the occupier, must provide:

(a) the authorised officer executing the monitoring warrant; and

(b) any person assisting that officer;

with all reasonable facilities and assistance for the effective exercise of their powers.

Note: Monitoring warrants are issued under section 159.

(2) A person commits an offence if:

(a) the person is subject to a requirement under subsection (1); and

(b) the person engages in conduct; and

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

Penalty for contravention of this subsection: 30 penalty units.

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Division 6—Monitoring warrants

159 Monitoring warrants

(1) An authorised officer may apply to a magistrate for a warrant under this section in relation to reporting entity business premises.

Note: A warrant under this section is called a ***monitoring warrant***.

(2) The magistrate may issue the warrant if the magistrate is satisfied, by information on oath or affirmation, that it is reasonably necessary that one or more authorised officers should have access to the premises for the purposes of determining whether the provisions of this Act, the regulations or the AML/CTF Rules have been, or are being, complied with. This subsection has effect subject to subsection (3).

(3) The magistrate must not issue the warrant unless the authorised officer or some other person has given to the magistrate, either orally or by affidavit, such further information (if any) as the magistrate requires concerning the grounds on which the issue of the warrant is being sought.

(4) The warrant must:

(a) contain a description of the premises to which the warrant relates; and

(b) authorise one or more authorised officers (whether or not named in the warrant), and any person or persons assisting the authorised officer or authorised officers:

(i) to enter the premises; and

(ii) to exercise the powers set out in section 148 in relation to the premises; and

(c) state whether the entry is authorised to be made at any time of the day or during specified hours of the day; and

(d) specify the day (not more than 6 months after the issue of the warrant) on which the warrant ceases to have effect; and

(e) state the purpose for which the warrant is issued.

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160 Magistrates—personal capacity

Functions conferred personally

(1) The functions conferred on a magistrate by section 159 are conferred on the magistrate:
  (a) in a personal capacity; and
  (b) not as a court or a member of a court.

Functions need not be accepted

(2) The magistrate need not accept the functions conferred.

Protection and immunity

(3) A magistrate performing a function conferred by section 159 has the same protection and immunity as if he or she were performing the function:
  (a) as the court of which the magistrate is a member; or
  (b) as a member of the court of which the magistrate is a member.

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Division 7—External audits

161 External audits—risk management etc.

Scope

(1) This section applies if the AUSTRAC CEO has reasonable grounds to suspect that a reporting entity has not taken, or is not taking, appropriate action to:

(a) identify; and

(b) mitigate; and

(c) manage;

the risk the reporting entity may reasonably face that the provision by the reporting entity of designated services at or through a permanent establishment of the entity in Australia might (whether inadvertently or otherwise) involve or facilitate:

(d) money laundering; or

(e) financing of terrorism.

Requirement

(2) The AUSTRAC CEO may, by written notice given to the reporting entity, require the reporting entity to:

(a) appoint an external auditor; and

(b) arrange for the external auditor to carry out an external audit of the reporting entity's capacity and endeavours to:

(i) identify; and

(ii) mitigate; and

(iii) manage;

the risk the reporting entity may reasonably face that the provision by the reporting entity of designated services at or through a permanent establishment of the reporting entity in Australia might (whether inadvertently or otherwise) involve or facilitate:

(iv) money laundering; or

(v) financing of terrorism; and

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(c) arrange for the external auditor to give the reporting entity a written report (the ***audit report***) setting out the results of the audit; and

(d) give the AUSTRAC CEO a copy of the audit report within:

(i) the period specified in the notice; or

(ii) if the AUSTRAC CEO allows a longer period—that longer period.

Note: The AUSTRAC CEO's decisions under this subsection are reviewable (see Part 17A).

(3) The notice must specify:

(a) the matters to be covered by the audit; and

(b) the form of the audit report and the kinds of details it is to contain.

(4) The matters that may be specified under paragraph (3)(a) may include either or both of the following:

(a) an assessment of the risk the reporting entity may reasonably face that the provision by the reporting entity of designated services at or through a permanent establishment of the reporting entity in Australia might (whether inadvertently or otherwise) involve or facilitate:

(i) money laundering; or

(ii) financing of terrorism;

(b) an assessment of what the reporting entity will need to do, or continue to do, to:

(i) identify; and

(ii) mitigate; and

(iii) manage;

the risk the reporting entity may reasonably face that the provision by the reporting entity of designated services at or through a permanent establishment of the reporting entity in Australia might (whether inadvertently or otherwise) involve or facilitate:

(iv) money laundering; or

(v) financing of terrorism.

(5) Subsection (4) does not limit paragraph (3)(a).

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Eligibility for appointment as an external auditor

(6) An individual is not eligible to be appointed an external auditor by a reporting entity if:

(a) the individual is an officer, employee or agent of the reporting entity; or

(b) both:

(i) the reporting entity belongs to a designated business group; and

(ii) the individual is an officer, employee or agent of another member of the designated business group.

Offence

(7) A person commits an offence if:

(a) the person is subject to a requirement under subsection (2); and

(b) the person engages in conduct; and

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

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

Civil penalty

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

(9) Subsection (8) is a civil penalty provision.

162 External audits—compliance

(1) This section applies if the AUSTRAC CEO has reasonable grounds to suspect that a reporting entity has contravened, is contravening, or is proposing to contravene, this Act, the regulations or the AML/CTF Rules.

(2) The AUSTRAC CEO may, by written notice given to the reporting entity, require the reporting entity to:

(a) appoint an external auditor; and

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(b) arrange for the external auditor to carry out an external audit of whichever of the following is specified in the notice:
  (i) the reporting entity's compliance with this Act, the regulations and the AML/CTF Rules;
  (ii) one or more specified aspects of the reporting entity's compliance with this Act, the regulations and the AML/CTF Rules; and
(c) arrange for the external auditor to give the reporting entity a written report (the ***audit report***) setting out the results of the audit; and
(d) give the AUSTRAC CEO a copy of the audit report within:
  (i) the period specified in the notice; or
  (ii) if the AUSTRAC CEO allows a longer period—that longer period.

(3) The notice must specify:
(a) the matters to be covered by the audit; and
(b) the form of the audit report and the kinds of details it is to contain.

(4) The matters that may be specified under paragraph (3)(a) may include either or both of the following:
(a) an assessment of the reporting entity's existing capacity to comply with this Act, the regulations and the AML/CTF Rules;
(b) an assessment of what the reporting entity will need to do, or continue to do, to comply with this Act, the regulations and the AML/CTF Rules.

(5) Subsection (4) does not limit paragraph (3)(a).

Eligibility for appointment as an external auditor

(6) An individual is not eligible to be appointed an external auditor by a reporting entity if:
(a) the individual is an officer, employee or agent of the reporting entity; or
(b) both:

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(i) the reporting entity belongs to a designated business group; and

(ii) the individual is an officer, employee or agent of another member of the designated business group.

Offence

(7) A person commits an offence if:

(a) the person is subject to a requirement under subsection (2); and

(b) the person engages in conduct; and

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

Penalty: Imprisonment for 12 months or 60 penalty units, or both.

Civil penalty

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

(9) Subsection (8) is a civil penalty provision.

163 External auditor may have regard to the results of previous audit

In carrying out an external audit in accordance with a notice under section 161 or 162, an external auditor may, if:

(a) an external audit was completed under that section within the last preceding 2 years; and

(b) the external auditor is satisfied that the previous audit is still relevant;

have regard to the results of the previous audit.

164 External auditors

(1) The AUSTRAC CEO may, by writing, authorise a specified individual to be an external auditor for the purposes of this Act.

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

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

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

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Division 8—Money laundering and terrorism financing risk assessments

165 Money laundering and terrorism financing risk assessments

Scope

(1) This section applies if the AUSTRAC CEO is satisfied that:
  (a) a reporting entity has not carried out a money laundering and terrorism financing risk assessment; or
  (b) a reporting entity has carried out a money laundering and terrorism financing risk assessment, but the assessment has ceased to be current; or
  (c) a reporting entity has carried out a money laundering and terrorism financing risk assessment, but the assessment is inadequate.

Requirement

(2) The AUSTRAC CEO may, by written notice given to the reporting entity, require the reporting entity to:
  (a) carry out a money laundering and terrorism financing risk assessment; and
  (b) prepare a written report setting out the results of the assessment; and
  (c) give the AUSTRAC CEO a copy of the report within:
    (i) the period specified in the notice; or
    (ii) if the AUSTRAC CEO allows a longer period—that longer period.

(3) A person commits an offence if:
  (a) the person is subject to a requirement under subsection (2); and
  (b) the person engages in conduct; and
  (c) the person's conduct breaches the requirement.

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

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Civil penalty

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

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

Money laundering and terrorism financing program risk assessment

(6) For the purposes of this Act, a ***money laundering and terrorism financing risk assessment*** is an assessment by a reporting entity of:

(a) the risk the reporting entity may reasonably face that the provision by the reporting entity of designated services at or through a permanent establishment of the reporting entity in Australia might (whether inadvertently or otherwise) involve or facilitate:

(i) money laundering; or

(ii) financing of terrorism; and

(b) what the reporting entity will need to do, or continue to do, to:

(i) identify; and

(ii) mitigate; and

(iii) manage;

the risk the reporting entity may reasonably face that the provision by the reporting entity of designated services at or through a permanent establishment of the reporting entity in Australia might (whether inadvertently or otherwise) involve or facilitate:

(iv) money laundering; or

(v) financing of terrorism.

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Part 14—Information-gathering powers

166 Simplified outline

The following is a simplified outline of this Part:

- An authorised officer may obtain information or documents.

167 Authorised officer may obtain information and documents

Scope

(1) This section applies to a person if an authorised officer believes on reasonable grounds that:

(a) any of the following subparagraphs applies:

(i) the person is or has been a reporting entity;

(ii) the person is or has been an officer, employee or agent of a reporting entity;

(iii) the person's name is or has been entered on the Remittance Sector Register; and

(b) the person has information or a document that is relevant to the operation of this Act, the regulations or the AML/CTF Rules.

Requirement

(2) The authorised officer may, by written notice given to the person, require the person:

(a) to give to the authorised officer, within the period and in the manner specified in the notice, any such information; or

(b) to produce to the authorised officer, within the period and in the manner specified in the notice, any such documents; or

(c) to make copies of any such documents and to produce to the authorised officer, within the period and in the manner specified in the notice, those copies.

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Offence

(3) A person commits an offence if:
  (a) the person has been given a notice under subsection (2); and
  (b) the person omits to do an act; and
  (c) the omission contravenes a requirement in the notice.

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

Notice to set out the effect of offence provisions

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

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

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

168 Copying documents—reasonable compensation

A person is entitled to be paid reasonable compensation for complying with a requirement covered by paragraph 167(2)(c).

169 Self-incrimination

(1) A person is not excused from giving information or producing a document under section 167 on the ground that the information or the production of the document might tend to incriminate the person or expose the person to a penalty.

(2) However:
  (a) the information given or the document produced; or
  (b) giving the information or producing the document;

is not admissible in evidence against the person:
  (c) in civil proceedings other than proceedings under the *Proceeds of Crime Act 2002* that relate to this Act; or
  (d) in criminal proceedings other than:

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(i) proceedings for an offence against subsection 167(3); or

(ii) proceedings for an offence against section 136 or 137 that relates to this Part; or

(iii) proceedings for an offence against section 137.1 or 137.2 of the *Criminal Code* that relates to this Part.

170 Copies of documents

An authorised officer may inspect a document produced under this Part and may make and retain copies of, or take and retain extracts from, such a document.

171 Authorised officer may retain documents

(1) An authorised officer may take possession of a document produced under this Part, and retain it for as long as is reasonably necessary.

(2) The person otherwise entitled to possession of the document is entitled to be supplied, as soon as practicable, with a copy certified by the authorised officer to be a true copy.

(3) The certified copy must be received in all courts and tribunals as evidence as if it were the original.

(4) Until a certified copy is supplied, the authorised officer must provide the person otherwise entitled to possession of the document, or a person authorised by that person, reasonable access to the document for the purposes of inspecting and making copies of, or taking extracts from, the document.

172 Division 400 and Chapter 5 of the *Criminal Code*

If a person, or an officer, employee or agent of a person, provides information under a notice under subsection 167(2), the person, officer, employee or agent is taken, for the purposes of Division 400 and Chapter 5 of the *Criminal Code*, not to have been in possession of that information at any time.

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Part 15—Enforcement

Division 1—Introduction

173 Simplified outline

The following is a simplified outline of this Part:

- Pecuniary penalties are payable for contraventions of civil penalty provisions.
- Authorised officers, customs officers and police officers may issue infringement notices for unreported cross-border movements of physical currency and bearer negotiable instruments.
- The AUSTRAC CEO is to monitor compliance by reporting entities with their obligations under this Act, the regulations and the AML/CTF Rules.
- The AUSTRAC CEO may give a remedial direction to a reporting entity that has contravened a civil penalty provision.
- The Federal Court may grant injunctions in relation to contraventions of civil penalty provisions.
- The AUSTRAC CEO may accept enforceable undertakings.
- Customs officers and police officers may exercise powers of questioning, search and arrest in connection with a cross-border movement of physical currency or bearer negotiable instruments.

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Division 2—Civil penalties

174 Ancillary contravention of civil penalty provision

(1) A person must not:

(a) attempt to contravene a civil penalty provision (other than this subsection); or

(b) aid, abet, counsel or procure a contravention of a civil penalty provision (other than this subsection); or

(c) induce, whether by threats or promises or otherwise, a contravention of a civil penalty provision (other than this subsection); or

(d) be in any way, directly or indirectly, knowingly concerned in, or party to, a contravention of a civil penalty provision (other than this subsection); or

(e) conspire with others to effect a contravention of a civil penalty provision (other than this subsection).

Civil penalty

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

175 Civil penalty orders

(1) If the Federal Court is satisfied that a person has contravened a civil penalty provision, the Federal Court may order the person to pay the Commonwealth a pecuniary penalty.

(2) An order under subsection (1) is to be known as a ***civil penalty order***.

Determining amount of pecuniary penalty

(3) In determining the pecuniary penalty, the Federal Court must have regard to all relevant matters, including:

(a) the nature and extent of the contravention; and

(b) the nature and extent of any loss or damage suffered as a result of the contravention; and

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(c) the circumstances in which the contravention took place; and

(d) whether the person has previously been found by the Federal Court in proceedings under this Act to have engaged in any similar conduct; and

(e) if the Federal Court considers that it is appropriate to do so—whether the person has previously been found by a court in proceedings under a law of a State or Territory to have engaged in any similar conduct; and

(f) if the Federal Court considers that it is appropriate to do so—whether the person has previously been found by a court in a foreign country to have engaged in any similar conduct; and

(g) if the Federal Court considers that it is appropriate to do so—whether the person has previously been found by a court in proceedings under the *Financial Transaction Reports Act 1988* to have engaged in any similar conduct.

Maximum pecuniary penalty

(4) The pecuniary penalty payable by a body corporate must not exceed 100,000 penalty units.

(5) The pecuniary penalty payable by a person other than a body corporate must not exceed 20,000 penalty units.

Conduct contravening more than one civil penalty provision

(6) If conduct constitutes a contravention of 2 or more civil penalty provisions, proceedings may be instituted under this section against a person in relation to the contravention of any one or more of those provisions. However, the person is not liable to more than one pecuniary penalty under this section in respect of the same conduct.

Civil enforcement of penalty

(7) The pecuniary penalty is a civil debt payable to the Commonwealth. The Commonwealth may enforce the civil penalty order as if it were an order made in civil proceedings against the person to recover a debt due by the person. The debt arising from the order is taken to be a judgment debt.

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176 Who may apply for a civil penalty order

(1) Only the AUSTRAC CEO may apply for a civil penalty order.

(2) Subsection (1) does not exclude the operation of the *Director of Public Prosecutions Act 1983*.

177 2 or more proceedings may be heard together

The Federal Court may direct that 2 or more proceedings for civil penalty orders are to be heard together.

178 Time limit for application for an order

Proceedings for a civil penalty order may be started no later than 6 years after the contravention.

179 Civil evidence and procedure rules for civil penalty orders

The Federal Court must apply the rules of evidence and procedure for civil matters when hearing proceedings for a civil penalty order.

180 Civil proceedings after criminal proceedings

The Federal Court must not make a civil penalty order against a person for a contravention if the person has been convicted of an offence constituted by conduct that is substantially the same as the conduct constituting the contravention.

181 Criminal proceedings during civil proceedings

(1) Proceedings for a civil penalty order against a person are stayed if:

(a) criminal proceedings are started or have already been started against the person for an offence; and

(b) the offence is constituted by conduct that is substantially the same as the conduct alleged to constitute the contravention.

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(2) The proceedings for the order may be resumed if the person is not convicted of the offence. Otherwise, the proceedings for the order are dismissed.

182 Criminal proceedings after civil proceedings

Criminal proceedings may be started against a person for conduct that is substantially the same as conduct constituting a contravention of a civil penalty provision regardless of whether a civil penalty order has been made against the person.

183 Evidence given in proceedings for penalty not admissible in criminal proceedings

Evidence of information given, or evidence of production of documents, by an individual is not admissible in criminal proceedings against the individual if:

(a) the individual previously gave the evidence or produced the documents in proceedings for a civil penalty order against the individual for a contravention of a civil penalty provision (whether or not the order was made); and

(b) the conduct alleged to constitute the offence is substantially the same as the conduct that was claimed to constitute the contravention.

However, this does not apply to a criminal proceeding in respect of the falsity of the evidence given by the individual in the proceedings for the civil penalty order.

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Division 3—Infringement notices for certain contraventions

184 When an infringement notice can be given

(1) If an authorised officer, a customs officer or a police officer has reasonable grounds to believe that a person has contravened an infringement notice provision, the officer may give the person an infringement notice relating to the contravention.

(1A) An ***infringement notice provision*** means any of the following provisions:

(aaa) subsection 51B(1) (which deals with the requirement for reporting entities to enrol on the Reporting Entities Roll);

(aa) subsection 51F(1) (which deals with reporting entities notifying changes of their enrolment details);

(a) subsection 53(3) (which deals with reports about movements of physical currency);

(b) subsection 59(4) (which deals with reports about movements of bearer negotiable instruments);

(c) subsections 74(1), (1A), (1B) and (1C) (which deal with providing certain remittance services if unregistered or in breach of a condition of registration);

(d) subsection 75M(1) (which deals with notifying the AUSTRAC CEO of certain matters).

(2) The infringement notice must be given within 12 months after the day on which the contravention is alleged to have taken place.

(3) If a customs officer or a police officer issues an infringement notice, the officer must, within 5 business days after the day of issue of the infringement notice, forward a copy of the infringement notice to the AUSTRAC CEO.

185 Matters to be included in an infringement notice

(1) An infringement notice must:

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(a) set out the name of the person to whom the notice is given; and

(b) set out the name of the person who gave the notice; and

(c) set out brief details relating to the alleged contravention of the infringement notice provision, including the date of the alleged contravention; and

(d) contain a statement to the effect that neither criminal nor civil penalty proceedings will be brought in relation to the matter if the penalty specified in the notice is paid to the AUSTRAC CEO, on behalf of the Commonwealth, within:

(i) 28 days after the notice is given; or

(ii) if the AUSTRAC CEO allows a longer period—that longer period; and

(e) give an explanation of how payment of the penalty is to be made; and

(f) set out such other matters (if any) as are specified in the regulations.

(2) An infringement notice may specify more than one alleged contravention of one or more infringement notice provisions. If it does so, the infringement notice must set out the details referred to in paragraph (1)(c) in relation to each alleged contravention.

186 Amount of penalty—breaches of subsection 53(3) or 59(4)

(1) The penalty to be specified in an infringement notice relating to an alleged contravention of subsection 53(3) must be a pecuniary penalty equal to:

(a) if the total amount of the physical currency involved in the alleged contravention is $20,000 or more—5 penalty units; or

(b) otherwise—2 penalty units.

(2) The penalty to be specified in an infringement notice relating to an alleged contravention of subsection 59(4) must be a pecuniary penalty equal to:

(a) if the total value of the bearer negotiable instruments involved in the alleged contravention is $20,000 or more—5 penalty units; or

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(b) otherwise—2 penalty units.

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

Infringement notice—bodies corporate

(1) The penalty to be specified in an infringement notice for an alleged contravention of subsection 74(1), (1A), (1B), or (1C) or 75M(1) (a ***Part 6 infringement notice provision***) or subsection 51B(1) or 51F(1) (a ***Part 3A infringement notice provision***) by a body corporate must be a pecuniary penalty equal to:

(a) if the alleged contravention is of a kind specified in the AML/CTF Rules under subsection (3)—the number of penalty units specified in the AML/CTF Rules in relation to that kind of contravention; or

(b) otherwise—60 penalty units.

Infringement notice—persons other than bodies corporate

(2) The penalty to be specified in an infringement notice for an alleged contravention of a Part 6 infringement notice provision or a Part 3A infringement notice provision by a person other than a body corporate must be a pecuniary penalty equal to:

(a) if the alleged contravention is of a kind specified in the AML/CTF Rules under subsection (3)—the number of penalty units specified in the AML/CTF Rules in relation to that kind of contravention; or

(b) otherwise—12 penalty units.

AML/CTF Rules may specify penalty units

(3) For the purposes of paragraphs (1)(a) and (2)(a), the AML/CTF Rules may:

(a) set out one or more kinds of alleged contraventions of a Part 6 infringement notice provision or a Part 3A infringement notice provision; and

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(b) for each kind of contravention set out in the AML/CTF Rules—specify a particular number of penalty units that applies.

(4) Without limiting the kinds of contraventions that may be specified in the AML/CTF Rules made under paragraph (3)(a), the contraventions may be described by reference to the following:

(a) whether an alleged contravention is one of a number of alleged contraventions of a Part 6 infringement notice provision or a Part 3A infringement notice provision specified in a particular infringement notice;

(b) whether a person alleged to have contravened one or more Part 6 infringement notice provisions or Part 3A infringement notice provisions has previously been given an infringement notice in relation to an alleged contravention of a Part 6 infringement notice provision or a Part 3A infringement notice provision.

(5) The number of penalty units specified in AML/CTF Rules made under paragraph (3)(b) in relation to a particular kind of contravention must not exceed:

(a) in the case of an alleged contravention by a body corporate—120 penalty units; or

(b) in the case of an alleged contravention by a person other than a body corporate—24 penalty units.

187 Withdrawal of an infringement notice

(1) This section applies if an infringement notice is given to a person.

(2) An authorised officer may, by written notice (the ***withdrawal notice***) given to the person, withdraw the infringement notice.

(3) To be effective, the withdrawal notice must be given to the person within 28 days after the infringement notice was given.

Refund of penalty if infringement notice withdrawn

(4) If:

(a) the penalty specified in the infringement notice is paid; and

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(b) the infringement notice is withdrawn after the penalty is paid;

the Commonwealth is liable to refund the penalty.

188 What happens if the penalty is paid

(1) This section applies if:

(a) an infringement notice relating to an alleged contravention of an infringement notice provision is given to a person; and

(b) the penalty is paid in accordance with the infringement notice; and

(c) the infringement notice is not withdrawn.

(2) Any liability of the person for the alleged contravention is discharged.

(3) Criminal proceedings, or section 175 proceedings, may not be brought against the person for the alleged contravention.

189 Effect of this Division on criminal and civil proceedings

This Division does not:

(a) require an infringement notice to be given in relation to an alleged contravention of an infringement notice provision; or

(b) affect the liability of a person to have:

(i) criminal proceedings brought against the person for an alleged contravention of subsection 53(1) or 59(3) or 74(2), (4), (6) or (8); or

(ii) section 175 proceedings brought against the person for an alleged contravention of an infringement notice provision;

if:

(iii) the person does not comply with an infringement notice relating to the contravention; or

(iv) an infringement notice relating to the contravention is not given to the person; or

(v) an infringement notice relating to the contravention is given to the person and subsequently withdrawn; or

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(c) limit a court's discretion to determine the amount of a penalty to be imposed on a person who:

(i) is found in criminal proceedings to have contravened subsection 53(1) or 59(3) or 74(2), (4), (6) or (8); or

(ii) is found in section 175 proceedings to have contravened an infringement notice provision.

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Division 4—Monitoring of compliance

190 Monitoring of compliance

(1) The AUSTRAC CEO is to monitor, and report to the Minister on, compliance by reporting entities with their obligations under this Act, the regulations and the AML/CTF Rules.

(2) If:

(a) the AUSTRAC CEO has reasonable grounds to believe that a reporting entity has breached any of its obligations under this Act, the regulations or the AML/CTF Rules; and

(b) the AUSTRAC CEO is satisfied that the breach is relevant to the performance of the functions, or the exercise of the powers, of an Australian government body; and

(c) the AUSTRAC CEO has given the Minister a report about the breach;

the AUSTRAC CEO may give the body a copy of that report.

(2A) Subsection (1) does not require the AUSTRAC CEO to monitor, and report individually upon, each reporting entity that is registered under Part 6 of this Act, but the AUSTRAC CEO must monitor and report generally upon those reporting entities.

(3) An action, suit or proceeding (whether criminal or civil) does not lie against:

(a) the Commonwealth; or

(b) the AUSTRAC CEO; or

(c) a member of the staff of AUSTRAC;

in relation to any action taken under this section by way of:

(d) the giving of a report; or

(e) the giving of a copy of a report.

(4) Subsection (2) does not limit section 126.

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Division 5—Remedial directions

191 Remedial directions

(1) This section applies if the AUSTRAC CEO is satisfied that a reporting entity has contravened, or is contravening, a civil penalty provision (other than subsection (4)).

(2) The AUSTRAC CEO may give the reporting entity a written direction requiring the reporting entity to take specified action directed towards ensuring that the reporting entity does not contravene the civil penalty provision, or is unlikely to contravene the civil penalty provision, in the future.

Note: A decision to give a direction is reviewable (see Part 17A).

(3) The following are examples of the kinds of direction that may be given to a reporting entity under subsection (2):

(a) a direction that the reporting entity implement effective administrative systems for monitoring compliance with a civil penalty provision;

(b) a direction that the reporting entity implement a system designed to give the reporting entity's officers, employees and agents a reasonable knowledge and understanding of the requirements of a civil penalty provision, in so far as those requirements affect the officers, employees or agents concerned.

(4) A reporting entity must not contravene a direction under subsection (2).

Civil penalty

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

Remedial direction is not a legislative instrument

(6) A direction under subsection (2) is not a legislative instrument.

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Division 6—Injunctions

192 Injunctions

Restraining injunctions

(1) If a person has engaged, is engaging or is proposing to engage, in any conduct in contravention of a civil penalty provision, the Federal Court may, on the application of the AUSTRAC CEO, grant an injunction:
  (a) restraining the person from engaging in the conduct; and
  (b) if, in the Court's opinion, it is desirable to do so—requiring the person to do something.

Performance injunctions

(2) If:
  (a) a person has refused or failed, or is refusing or failing, or is proposing to refuse or fail, to do an act or thing; and
  (b) the refusal or failure was, is or would be a contravention of a civil penalty provision;

the Federal Court may, on the application of the AUSTRAC CEO, grant an injunction requiring the person to do that act or thing.

193 Interim injunctions

Grant of interim injunction

(1) If an application is made to the Federal Court for an injunction under section 192, the Court may, before considering the application, grant an interim injunction restraining a person from engaging in conduct of a kind mentioned in that section.

No undertakings as to damages

(2) The Federal Court is not to require an applicant for an injunction under section 192, as a condition of granting an interim injunction, to give any undertakings as to damages.

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194 Discharge etc. of injunctions

The Federal Court may discharge or vary an injunction granted under this Division.

195 Certain limits on granting injunctions not to apply

Restraining injunctions

(1) The power of the Federal Court under this Division to grant an injunction restraining a person from engaging in conduct of a particular kind may be exercised:

(a) if the Court is satisfied that the person has engaged in conduct of that kind—whether or not it appears to the Court that the person intends to engage again, or to continue to engage, in conduct of that kind; or

(b) if it appears to the Court that, if an injunction is not granted, it is likely that the person will engage in conduct of that kind—whether or not the person has previously engaged in conduct of that kind and whether or not there is an imminent danger of substantial damage to any person if the person engages in conduct of that kind.

Performance injunctions

(2) The power of the Federal Court to grant an injunction requiring a person to do an act or thing may be exercised:

(a) if the Court is satisfied that the person has refused or failed to do that act or thing—whether or not it appears to the Court that the person intends to refuse or fail again, or to continue to refuse or fail, to do that act or thing; or

(b) if it appears to the Court that, if an injunction is not granted, it is likely that the person will refuse or fail to do that act or thing—whether or not the person has previously refused or failed to do that act or thing and whether or not there is an imminent danger of substantial damage to any person if the person refuses or fails to do that act or thing.

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196 Other powers of the Federal Court unaffected

The powers conferred on the Federal Court under this Division are in addition to, and not instead of, any other powers of the Court, whether conferred by this Act or otherwise.

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Division 7—Enforceable undertakings

197 Acceptance of undertakings

(1) The AUSTRAC CEO may accept any of the following undertakings:

(a) a written undertaking given by a person that the person will, in order to comply with this Act, the regulations or the AML/CTF Rules, take specified action;

(b) a written undertaking given by a person that the person will, in order to comply with this Act, the regulations or the AML/CTF Rules, refrain from taking specified action;

(c) a written undertaking given by a person that the person will take specified action directed towards ensuring that the person does not contravene this Act, the regulations or the AML/CTF Rules, or is unlikely to contravene this Act, the regulations or the AML/CTF Rules, in the future.

(2) The undertaking must be expressed to be an undertaking under this section.

(3) The person may withdraw or vary the undertaking at any time, but only with the consent of the AUSTRAC CEO.

(4) The AUSTRAC CEO may, by written notice given to the person, cancel the undertaking.

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

(a) is commercial in confidence; or

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

(c) consists of personal details of an individual.

(6) If:

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

(b) the copy has information deleted from it;

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

198 Enforcement of undertakings

(1) If:

(a) a person has given an undertaking under section 197; and

(b) the undertaking has not been withdrawn or cancelled; and

(c) the AUSTRAC CEO considers that the person has breached the undertaking;

the AUSTRAC CEO may apply to the Federal Court for an order under subsection (2).

(2) If the Federal Court is satisfied that the person has breached the undertaking, the Court may make any or all of the following orders:

(a) an order directing the person to comply with the undertaking;

(b) an order directing the person to pay to the Commonwealth an amount up to the amount of any financial benefit that the person has obtained directly or indirectly and that is reasonably attributable to the breach;

(c) any order that the Court considers appropriate directing the person to compensate any other person who has suffered loss or damage as a result of the breach;

(d) any other order that the Court considers appropriate.

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Division 8—Powers of questioning, search and arrest in relation to cross-border movements of physical currency and bearer negotiable instruments

199 Questioning and search powers in relation to physical currency

Person leaving Australia

(1) A person who is:

(a) about to leave Australia; or

(b) in an embarkation area for the purpose of leaving Australia;

must, if required to do so by a police officer or a customs officer:

(c) declare whether or not the person has with him or her any Australian currency or foreign currency; and

(d) declare the total amount of any Australian currency or foreign currency that the person has with him or her; and

(e) declare whether or not, to the best of the person's knowledge and belief, a report under section 53 has been given in respect of any Australian currency or foreign currency that the person has with him or her; and

(f) produce to the officer any Australian currency or foreign currency that the person has with him or her.

Person arriving in Australia

(2) A person who arrives in Australia must, if required to do so by a police officer or a customs officer:

(a) declare whether or not the person has with him or her any Australian currency or foreign currency; and

(b) declare the total amount of any Australian currency or foreign currency that the person has with him or her; and

(c) declare whether or not, to the best of the person's knowledge and belief, a report under section 53 has been given in respect of any Australian currency or foreign currency that the person has with him or her; and

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(d) produce to the officer any Australian currency or foreign currency that the person has with him or her.

Powers of examination and search

(3) A police officer or a customs officer may, with such assistance as is reasonable and necessary, examine an article which a person has with him or her if the person:

(a) is about to leave Australia or has arrived in Australia; or

(b) is about to board or leave, or has boarded or left, any ship or aircraft;

for the purpose of finding out whether the person has with him or her any physical currency in respect of which a report under section 53 is required.

(4) Either:

(a) a police officer; or

(b) a customs officer in respect of whom a declaration under section 219ZA of the *Customs Act 1901* is in force;

may, with such assistance as is reasonable and necessary, search a person for the purpose of finding out whether the person has with him or her any physical currency in respect of which a report under section 53 is required, so long as:

(c) any of the following subparagraphs applies:

(i) the person is about to leave Australia;

(ii) the person has arrived in Australia;

(iii) the person is about to board or leave a ship or aircraft;

(iv) the person has boarded or left a ship or aircraft; and

(d) the officer has reasonable grounds to suspect that there is on the person, or in clothing being worn by the person, physical currency in respect of which a report under section 53 is required.

(5) If a police officer or a customs officer has reasonable grounds to suspect that physical currency found in the course of an examination or search under subsection (3) or (4) may afford evidence as to the commission of an offence against section 53, the officer may seize the physical currency.

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(6) A person must not be searched under subsection (4) except by a person of the same sex.

Boarding of ships and aircraft

(7) A police officer or a customs officer, and any person assisting a police officer or customs officer, may board a ship or aircraft for the purpose of exercising the powers conferred by subsection (1), (2), (3) or (4).

(8) A police officer or a customs officer may, with such assistance as is reasonable and necessary:

(a) board a ship or aircraft; and

(b) examine or search the ship or aircraft, and any goods found on the ship or aircraft;

for the purpose of ascertaining whether there is on board the ship or aircraft any physical currency in respect of which a report under section 53 is required.

Entry to eligible places

(9) A police officer or a customs officer may, with such assistance as is reasonable and necessary:

(a) go onto or enter any eligible place; and

(b) examine the place, and any goods found at or in it;

for the purpose of finding out whether there is at or in the place, or in the goods, any physical currency in respect of which a report under section 53 is required.

Seizure

(10) If a police officer or a customs officer has reasonable grounds to suspect that physical currency found in the course of an examination or search under subsection (8) or (9) may afford evidence as to the commission of an offence against section 53, the officer may seize the physical currency.

Offence

(11) A person commits an offence if:

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(a) the person is subject to a requirement under subsection (1) or (2); and
(b) the person engages in conduct; and
(c) the person's conduct breaches the requirement.

Penalty for contravention of this subsection: Imprisonment for 1 year or 60 penalty units, or both.

200 Questioning and search powers in relation to bearer negotiable instruments

Person leaving Australia

(1) A person who is:
(a) about to leave Australia; or
(b) in an embarkation area for the purpose of leaving Australia;
must, if required to do so by a police officer or a customs officer:
(c) declare whether or not the person has with him or her any bearer negotiable instruments; and
(d) declare the amount payable under each bearer negotiable instrument that the person has with him or her; and
(e) produce to the officer each bearer negotiable instrument that the person has with him or her.

Person arriving in Australia

(2) A person who arrives in Australia must, if required to do so by a police officer or a customs officer:
(a) declare whether or not the person has with him or her any bearer negotiable instruments; and
(b) declare the amount payable under each bearer negotiable instrument that the person has with him or her; and
(c) produce to the officer each bearer negotiable instrument that the person has with him or her.

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Officer may copy bearer negotiable instruments

(3) If a person produces a bearer negotiable instrument to a police officer or a customs officer under subsection (1) or (2), the officer may make a copy of the bearer negotiable instrument. Once copied, the officer must return the bearer negotiable instrument to the person.

Officer may conduct searches etc.

(4) If:

(a) a police officer or a customs officer has asked a person to make a declaration under subsection (1) or (2); and

(b) the officer has reasonable grounds to suspect that the person has made a declaration that is false or misleading (a ***false declaration***);

the officer may, with such assistance as is reasonable and necessary, examine an article which the person has with him or her if any of the following paragraphs applies:

(c) the person is about to leave Australia;

(d) the person has arrived in Australia;

(e) the person is about to board or leave a ship or aircraft;

(f) the person has boarded or left a ship or aircraft;

for the purpose of finding out whether the person has with him or her any bearer negotiable instruments in respect of which a false declaration has been made.

(5) If:

(a) a police officer or a customs officer has asked a person to make a declaration under subsection (1) or (2); and

(b) the person refuses or fails to make the declaration;

the officer may, with such assistance as is reasonable and necessary, examine an article which the person has with him or her if any of the following paragraphs applies:

(c) the person is about to leave Australia;

(d) the person has arrived in Australia;

(e) the person is about to board or leave a ship or aircraft;

(f) the person has boarded or left a ship or aircraft;

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for the purpose of finding out whether the person has with him or her any bearer negotiable instruments.

(6) If:

(a) a police officer or a customs officer has asked a person to produce a bearer negotiable instrument under subsection (1) or (2); and

(b) the person refuses or fails to produce the bearer negotiable instrument;

the officer may, with such assistance as is reasonable and necessary, examine an article which the person has with him or her if any of the following paragraphs applies:

(c) the person is about to leave Australia;

(d) the person has arrived in Australia;

(e) the person is about to board or leave a ship or aircraft;

(f) the person has boarded or left a ship or aircraft;

for the purpose of finding out whether the person has with him or her any bearer negotiable instruments.

(7) If:

(a) either:

(i) a police officer; or

(ii) a customs officer in respect of whom a declaration under section 219ZA of the *Customs Act 1901* is in force;

has asked a person to make a declaration under subsection (1) or (2); and

(b) the officer has reasonable grounds to suspect that the person has made a declaration that is false or misleading (a ***false declaration***);

the officer may, with such assistance as is reasonable and necessary, search the person if:

(c) any of the following subparagraphs applies:

(i) the person is about to leave Australia;

(ii) the person has arrived in Australia;

(iii) the person is about to board or leave a ship or aircraft;

(iv) the person has boarded or left a ship or aircraft; and

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(d) the officer has reasonable grounds to suspect that there is on the person, or in clothing being worn by the person, a bearer negotiable instrument in respect of which a false declaration has been made;

for the purpose of finding out whether the person has with him or her any bearer negotiable instruments in respect of which a false declaration has been made.

(8) If:

(a) either:

(i) a police officer; or

(ii) a customs officer in respect of whom a declaration under section 219ZA of the *Customs Act 1901* is in force;

has asked a person to make a declaration under subsection (1) or (2); and

(b) the person refuses or fails to make the declaration;

the officer may, with such assistance as is reasonable and necessary, search the person if:

(c) any of the following subparagraphs applies:

(i) the person is about to leave Australia;

(ii) the person has arrived in Australia;

(iii) the person is about to board or leave a ship or aircraft;

(iv) the person has boarded or left a ship or aircraft; and

(d) the officer has reasonable grounds to suspect that there is on the person, or in clothing being worn by the person, a bearer negotiable instrument;

for the purpose of finding out whether the person has with him or her any bearer negotiable instruments.

(9) If:

(a) either:

(i) a police officer; or

(ii) a customs officer in respect of whom a declaration under section 219ZA of the *Customs Act 1901* is in force;

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has asked a person to produce a bearer negotiable instrument under subsection (1) or (2); and

(b) the person refuses or fails to produce the bearer negotiable instrument;

the officer may, with such assistance as is reasonable and necessary, search the person if:

(c) any of the following subparagraphs applies:

(i) the person is about to leave Australia;

(ii) the person has arrived in Australia;

(iii) the person is about to board or leave a ship or aircraft;

(iv) the person has boarded or left a ship or aircraft; and

(d) the officer has reasonable grounds to suspect that there is on the person, or in clothing being worn by the person, a bearer negotiable instrument;

for the purpose of finding out whether the person has with him or her any bearer negotiable instruments.

(10) A person must not be searched under subsection (7), (8) or (9) except by a person of the same sex.

Officer may conduct searches on board a ship or aircraft

(11) A police officer or a customs officer, and any person assisting the officer, may:

(a) board any ship or aircraft; or

(b) go onto or enter any eligible place;

for the purpose of exercising the powers conferred by subsection (1), (2), (4), (5), (6), (7), (8) or (9).

Officer may seize bearer negotiable instruments

(12) If:

(a) in the course of an examination or search under subsection (4), (5), (6), (7), (8) or (9), a police officer or a customs officer finds a bearer negotiable instrument; and

(b) the person:

(i) has made a declaration under subsection (1) or (2) that is false or misleading; or

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(ii) has refused or failed to make a declaration under subsection (1) or (2); or

(iii) has refused or failed to produce a bearer negotiable instrument under subsection (1) or (2);

the officer may seize the instrument.

(13) If:

(a) a person produces a bearer negotiable instrument to a police officer or a customs officer under subsection (1) or (2); and

(b) the person has made a declaration under subsection (1) or (2) that is false or misleading;

the officer may seize the instrument.

Offence

(14) A person commits an offence if:

(a) the person is subject to a requirement under subsection (1) or (2); and

(b) the person engages in conduct; and

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

Penalty for contravention of this subsection: Imprisonment for 1 year or 60 penalty units, or both.

201 Arrest without warrant

(1) If a police officer or a customs officer has reasonable grounds to believe that a person has committed an offence against subsection 53(1) or 59(3), the officer may arrest the person without warrant.

(2) If a police officer or a customs officer has reasonable grounds to believe that a person has assaulted any police officer or customs officer in the execution of that officer's duties under this Division, the first-mentioned officer may arrest the person without warrant.

(3) A person commits an offence if:

(a) the person engages in conduct; and

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(b) the conduct resists, obstructs or prevents the arrest of a person under this section.

Penalty: 10 penalty units.

(4) Subsection (3) does not apply if the person has a reasonable excuse.

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

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Division 9—Notices to reporting entities

202 Notices to reporting entities

(1) Each of the following persons is authorised to give notices under this section:

(a) the AUSTRAC CEO;

(b) an authorised officer;

(c) the Commissioner of the Australian Federal Police;

(d) a Deputy Commissioner of the Australian Federal Police;

(e) a senior executive AFP employee (within the meaning of the *Australian Federal Police Act 1979*) who is:

(i) a member of the Australian Federal Police; and

(ii) authorised in writing by the Commissioner of the Australian Federal Police for the purposes of this section;

(f) the Chief Executive Officer of the Australian Crime Commission;

(g) an examiner of the Australian Crime Commission;

(h) an approved examiner (within the meaning of the *Proceeds of Crime Act 2002*).

(2) If a person authorised by subsection (1) believes on reasonable grounds that another person is a reporting entity, the authorised person may give a written notice to the other person requiring the other person to give the authorised person any information, or produce to the authorised person any documents, relevant to any or all of the following:

(a) determining whether the other person provides designated services at or through a permanent establishment of the other person in Australia;

(b) ascertaining details relating to any permanent establishment in Australia at or through which the other person provides designated services;

(c) ascertaining details relating to designated services provided by the other person at or through a permanent establishment of the other person in Australia.

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(3) A person must not give a notice under subsection (2) unless the person reasonably believes that giving the notice is required:
  (a) to determine whether to take any action under this Act; or
  (b) in relation to proceedings under this Act.

(4) A person must comply with a notice given to the person under subsection (2).

203 Contents of notices to reporting entities

A notice given by a person to another person under subsection 202(2) must:
  (a) state that the first-mentioned person believes that the notice is required:
    (i) to determine whether to take any action under this Act; or
    (ii) in relation to proceedings under this Act;
  (as the case requires); and
  (b) specify the name of the other person; and
  (c) specify the kind of information or documents required to be given or produced; and
  (d) specify the form and manner in which that information or those documents are to be given or produced; and
  (e) state that the information or documents must be given or produced within 14 days after the notice is given; and
  (f) set out the effect of section 204 (breaching a requirement under a notice); and
  (g) if the notice specifies that information about the notice must not be disclosed—set out the effect of section 207 (disclosing existence or nature of a notice).

204 Breaching a notice requirement

A person commits an offence if:
  (a) the person is subject to a requirement under subsection 202(4); and
  (b) the person engages in conduct; and
  (c) the person's conduct breaches the requirement.

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

205 Self-incrimination

(1) A person is not excused from giving information or producing a document under section 202 on the ground that the information or the production of the document might tend to incriminate the person or expose the person to a penalty.

(2) However:

(a) the information given or the document produced; or

(b) giving the information or producing the document;

is not admissible in evidence against the person:

(c) in civil proceedings other than:

(i) proceedings under this Act; or

(ii) proceedings under the *Proceeds of Crime Act 2002* that relate to this Act; or

(d) in criminal proceedings other than:

(i) proceedings for an offence against this Act; or

(ii) proceedings for an offence against the *Criminal Code* that relates to this Act.

206 Division 400 and Chapter 5 of the *Criminal Code*

If a person, or an officer, employee or agent of a person, provides information under a notice under subsection 202(2), the person, officer, employee or agent is taken, for the purposes of Division 400 and Chapter 5 of the *Criminal Code*, not to have been in possession of that information at any time.

207 Disclosing existence or nature of notice

(1) A person commits an offence if:

(a) the person is given a notice under subsection 202(2); and

(b) the notice specifies that information about the notice must not be disclosed; and

(c) the person discloses the existence or nature of the notice.

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

(2) Subsection (1) does not apply to the disclosure of information by a reporting entity if the disclosure is to a legal practitioner (however described) for the purpose of obtaining legal advice.

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

(3) Subsection (1) does not apply to the disclosure of information by a reporting entity if:

(a) the reporting entity is a member of a designated business group; and

(b) the disclosure is made to another member of the designated business group.

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

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Part 16—Administration

Division 1—Introduction

208 Simplified outline

The following is a simplified outline of this Part:

- AUSTRAC is continued in existence.
- There is to be a Chief Executive Officer of AUSTRAC.
- The AUSTRAC CEO's functions include the compilation and analysis of eligible collected information.
- The AUSTRAC CEO may make AML/CTF Rules.

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Division 2—Establishment and function of AUSTRAC

209 Establishment of AUSTRAC

(1) The Australian Transaction Reports and Analysis Centre established under the *Financial Transaction Reports Act 1988* continues in existence by force of this subsection, under and subject to the provisions of this Act.

(2) The Australian Transaction Reports and Analysis Centre may also be known as AUSTRAC.

(3) AUSTRAC consists of:
  (a) the AUSTRAC CEO; and
  (b) the staff of AUSTRAC.

Note: AUSTRAC does not have a legal identity separate from the Commonwealth.

210 Function of AUSTRAC

The function of AUSTRAC is to assist the AUSTRAC CEO in the performance of the AUSTRAC CEO's functions.

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Division 3—Chief Executive Officer of AUSTRAC

Subdivision A—Office and functions of the AUSTRAC CEO

211 AUSTRAC CEO

(1) There is to be a Chief Executive Officer of AUSTRAC.

(2) The Chief Executive Officer of AUSTRAC may also be known as the AUSTRAC CEO.

(3) The office of Chief Executive Officer of AUSTRAC is, for all purposes, a continuation under that name of the office of Director of AUSTRAC established under the *Financial Transaction Reports Act 1988*.

(4) To avoid doubt, a reference in a law of the Commonwealth to the AUSTRAC CEO must, in relation to matters that occurred before the commencement of this section, be construed as a reference to the Director of AUSTRAC.

Note: See also section 25B of the *Acts Interpretation Act 1901*.

212 Functions of the AUSTRAC CEO

(1) The functions of the AUSTRAC CEO are:

(a) to retain, compile, analyse and disseminate eligible collected information; and

(b) to provide advice and assistance, in relation to AUSTRAC information, to the persons and agencies who are entitled or authorised to access AUSTRAC information under Part 11; and

(c) to advise and assist reporting entities in relation to their obligations under this Act, the regulations and the AML/CTF Rules; and

(d) to advise and assist the representatives of reporting entities in relation to compliance by reporting entities with this Act, the regulations and the AML/CTF Rules; and

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(e) to promote compliance with this Act, the regulations and the AML/CTF Rules; and

(f) such other functions as are conferred on the AUSTRAC CEO by or under:

(i) this Act; or

(ii) the regulations; or

(iii) any other law of the Commonwealth.

Note: The AUSTRAC CEO's other functions include:

(a) monitoring compliance with this Act, the regulations and the AML/CTF Rules (see section 190); and

(b) making AML/CTF Rules (see section 229).

(2) In performing the AUSTRAC CEO's functions, the AUSTRAC CEO must:

(a) consult with the following:

(i) reporting entities or the representatives of reporting entities;

(ii) the Commissioner of the Australian Federal Police;

(iii) the Chief Executive Officer of the Australian Crime Commission;

(iv) the Commissioner of Taxation;

(v) the Chief Executive Officer of Customs;

(vi) the Information Commissioner in relation to matters that relate to the privacy functions (within the meaning of the *Australian Information Commissioner Act 2010*); and

(b) take into account any comments made in the course of those consultations.

(3) In performing the AUSTRAC CEO's functions under this Act, the AUSTRAC CEO must have regard to the following:

(a) the integrity of the financial system;

(b) crime reduction;

(c) the desirability of ensuring that regulatory considerations are addressed in a way that does not impose unnecessary financial and administrative burdens on reporting entities;

(d) the desirability of adopting a risk-based approach;

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(e) competitive neutrality;
(f) competition;
(g) economic efficiency;
(h) privacy;
(i) such other matters (if any) as the AUSTRAC CEO considers relevant.

(4) In performing the AUSTRAC CEO's functions under this Act, the AUSTRAC CEO must have regard to:
(a) any relevant FATF Recommendations; and
(b) any relevant Conventions mentioned in subsection 3(3); and
(c) any relevant Resolutions mentioned in subsection 3(3).

(5) Any failure to comply with the requirements of subsection (2), (3) or (4) in relation to the performance of a function of the AUSTRAC CEO does not affect the validity of the performance of the function.

(6) Subsection (5) does not apply in determining the constitutional validity of the performance of the AUSTRAC CEO's functions.

213 Policy principles

(1) The Minister may give written policy principles to the AUSTRAC CEO about the performance of the AUSTRAC CEO's functions.

(2) The Minister must cause a copy of the policy principles to be tabled in each House of the Parliament within 15 sitting days of that House after the day on which they were given to the AUSTRAC CEO.

(3) The AUSTRAC CEO must comply with the policy principles (if any) when performing the AUSTRAC CEO's functions.

(4) Policy principles are not legislative instruments.

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Subdivision B—Appointment of the AUSTRAC CEO etc.

214 Appointment of the AUSTRAC CEO etc.

(1) The AUSTRAC CEO is to be appointed by the Minister by written instrument.

(2) The AUSTRAC CEO is to be appointed on a full-time basis.

(3) The AUSTRAC CEO holds office for the period specified in the instrument of appointment. The period must not exceed 5 years.

Note: The AUSTRAC CEO may be reappointed: see section 33AA of the *Acts Interpretation Act 1901*.

215 Remuneration and allowances of the AUSTRAC CEO

(1) The AUSTRAC CEO is to be paid the remuneration that is determined by the Remuneration Tribunal. If no determination of that remuneration by the Tribunal is in operation, the AUSTRAC CEO is to be paid the remuneration that is determined by the Minister.

(2) The AUSTRAC CEO is to be paid the allowances that are prescribed.

(3) This section has effect subject to the *Remuneration Tribunal Act 1973*.

216 Leave of absence of the AUSTRAC CEO

(1) The AUSTRAC CEO has the recreation leave entitlements that are determined by the Remuneration Tribunal.

(2) The Minister may grant the AUSTRAC CEO leave of absence, other than recreation leave, on the terms and conditions as to remuneration or otherwise that the Minister determines.

217 Resignation of the AUSTRAC CEO

The AUSTRAC CEO may resign his or her appointment by giving the Minister a written resignation.

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218 Notification of possible conflict of interest by the AUSTRAC CEO

Immediately after the AUSTRAC CEO:

(a) acquires any interest, pecuniary or otherwise, that could conflict with the proper performance of his or her duties; or

(b) becomes aware that any interest, pecuniary or otherwise, that:

(i) he or she has; or

(ii) he or she is likely to acquire;

could conflict with the proper performance of his or her duties;

the AUSTRAC CEO must notify the Minister, in writing, of that interest.

219 Termination of the AUSTRAC CEO's appointment

Termination

(1) The Minister may terminate the appointment of the AUSTRAC CEO for misbehaviour or physical or mental incapacity.

(2) The Minister may terminate the appointment of the AUSTRAC CEO if:

(a) the AUSTRAC CEO:

(i) becomes bankrupt; or

(ii) applies to take the benefit of any law for the relief of bankrupt or insolvent debtors; or

(iii) compounds with his or her creditors; or

(iv) makes an assignment of his or her remuneration for the benefit of his or her creditors; or

(b) the AUSTRAC CEO is absent from duty, except on leave of absence, for 14 consecutive days or for 28 days in any 12 months; or

(c) the AUSTRAC CEO engages, except with the Minister's approval, in paid employment outside the duties of his or her office; or

(d) the AUSTRAC CEO fails, without reasonable excuse, to comply with section 218; or

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(e) the Minister is satisfied that the performance of the AUSTRAC CEO has been unsatisfactory for a significant period.

Conflict of interest

(3) If the Minister becomes aware, whether because of a notification under section 218 or otherwise, that the AUSTRAC CEO has an interest that could conflict with the proper performance of the AUSTRAC CEO's duties, the Minister must make a written determination either that the interest does, or that it does not, pose a significant risk of a conflict of interest.

(4) If the Minister determines that the interest poses a significant risk, the Minister must require the AUSTRAC CEO to dispose of that interest within a period specified by the Minister.

(5) If:

(a) the Minister requires the AUSTRAC CEO to dispose of an interest; and

(b) the AUSTRAC CEO refuses or fails to comply with that requirement;

the Minister must terminate the appointment of the AUSTRAC CEO.

220 Other terms and conditions

The AUSTRAC CEO holds office on the terms and conditions (if any) in relation to matters not covered by this Act that are determined by the Minister.

221 Acting appointments

The Minister may appoint a person to act as the AUSTRAC CEO:

(a) during a vacancy in the office of AUSTRAC CEO (whether or not an appointment has previously been made to the office); or

(b) during any period, or during all periods, when the AUSTRAC CEO is absent from duty or from Australia, or is, for any reason, unable to perform the duties of the office.

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Note: For rules that apply to acting appointments, see section 33A of the *Acts Interpretation Act 1901*.

222 Delegation by the AUSTRAC CEO

(1) The AUSTRAC CEO may, by writing, delegate any or all of his or her functions or powers to a member of the staff of AUSTRAC.

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

(2) In performing functions and exercising powers under the delegation, the delegate must comply with any directions of the AUSTRAC CEO.

Note: See sections 34AA to 34A of the *Acts Interpretation Act 1901*.

223 Secretary may require the AUSTRAC CEO to give information

Information

(1) The Secretary may, by written notice given to the AUSTRAC CEO, require the AUSTRAC CEO to:

(a) prepare a document setting out specified information relating to the performance of the AUSTRAC CEO's functions; and

(b) give a copy of the document to the Secretary within the period specified in the notice.

Compliance with requirement

(2) The AUSTRAC CEO must comply with a requirement under subsection (1).

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Division 4—Staff of AUSTRAC etc.

224 Staff of AUSTRAC

(1) The staff of AUSTRAC are persons engaged under the *Public Service Act 1999*.

(2) For the purposes of the *Public Service Act 1999*:
  (a) the AUSTRAC CEO and the staff of AUSTRAC together constitute a Statutory Agency; and
  (b) the AUSTRAC CEO is the Head of that Statutory Agency.

225 Consultants and persons seconded to AUSTRAC

(1) The AUSTRAC CEO may, on behalf of the Commonwealth, engage consultants to perform services for AUSTRAC in connection with the performance of any of the AUSTRAC CEO's functions.

(2) The terms and conditions of engagement of persons engaged under subsection (1) are such as the AUSTRAC CEO determines in writing.

(3) The AUSTRAC CEO may also be assisted:
  (a) by officers and employees of Agencies (within the meaning of the *Public Service Act 1999*); or
  (b) by officers and employees of authorities of the Commonwealth; or
  (c) by members of the Australian Federal Police; or
  (d) by officers and employees of a State or Territory; or
  (e) by officers and employees of authorities of a State or Territory; or
  (f) by members of the police force or police service of a State or Territory; or
  (g) by persons with suitable qualifications and experience who are officers, or employees, of some other body or organisation (whether located within or outside Australia);

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whose services are made available to the AUSTRAC CEO in connection with the performance of any of the AUSTRAC CEO's functions.

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Division 5—Reports and information

226 Annual report

(1) The AUSTRAC CEO must, as soon as practicable after 30 June in each year, prepare and give to the Minister a report of the AUSTRAC CEO's operations during the year ending on that 30 June.

Note: See also section 34C of the *Acts Interpretation Act 1901*.

(2) The Minister must cause a copy of each report under this section to be tabled in each House of the Parliament within 15 sitting days of that House after receiving the report.

227 Minister may require the AUSTRAC CEO to prepare reports or give information

Reports

(1) The Minister may, by written notice given to the AUSTRAC CEO, require the AUSTRAC CEO:

(a) to prepare a report about one or more specified matters relating to the performance of the AUSTRAC CEO's functions; and

(b) give a copy of the report to the Minister within the period specified in the notice.

Information

(2) The Minister may, by written notice given to the AUSTRAC CEO, require the AUSTRAC CEO to:

(a) prepare a document setting out specified information relating to the performance of the AUSTRAC CEO's functions; and

(b) give a copy of the document to the Minister within the period specified in the notice.

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Compliance

(3) The AUSTRAC CEO must comply with a requirement under subsection (1) or (2).

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Division 6—Directions by Minister

228 Directions by Minister

(1) The Minister may give the AUSTRAC CEO a written direction about policies the AUSTRAC CEO should pursue, or priorities the AUSTRAC CEO should follow, in performing any of the AUSTRAC CEO's functions.

(2) The Minister must not give a direction under subsection (1) about a particular case.

(3) The AUSTRAC CEO must comply with a direction under subsection (1).

(4) A direction under subsection (1) is not a legislative instrument.

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

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Division 7—AML/CTF Rules

229 AML/CTF Rules

(1) The AUSTRAC CEO may, by writing, make rules (the ***AML/CTF Rules***) prescribing matters required or permitted by any other provision of this Act to be prescribed by the AML/CTF Rules.

Note 1: ***AML/CTF Rules*** is short for Anti-Money Laundering/Counter-Terrorism Financing Rules.

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

(2) AML/CTF Rules are legislative instruments.

Ministerial directions with respect to the making of AML/CTF Rules

(3) The Minister may give the AUSTRAC CEO a written direction about the exercise of the powers conferred on the AUSTRAC CEO by subsection (1).

(4) The AUSTRAC CEO must comply with a direction under subsection (3).

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Part 17—Vicarious liability

230 Simplified outline

The following is a simplified outline of this Part:

- This Part deals with the proof of matters that involve employees, agents etc.

231 Criminal liability of corporations

Part 2.5 of the *Criminal Code* has effect, in relation to an offence against this Act, as if each reference in that Part to a body corporate were a reference to a corporation.

232 Civil liability of corporations

State of mind

(1) If, in a civil proceeding under, or arising out of, this Act in respect of conduct engaged in by a corporation, it is necessary to establish the state of mind of the corporation, it is sufficient to show that:
  (a) a director, employee or agent of the corporation engaged in that conduct; and
  (b) the director, employee or agent was, in engaging in that conduct, acting within the scope of his or her actual or apparent authority; and
  (c) the director, employee or agent had that state of mind.

Conduct

(2) If:
  (a) conduct is engaged in on behalf of a corporation by a director, employee or agent of the corporation; and
  (b) the conduct is within the scope of his or her actual or apparent authority;

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the conduct is taken, for the purposes of a civil proceeding under, or arising out of, this Act, to have been engaged in by the corporation unless the corporation proves that it took reasonable precautions and exercised due diligence to avoid the conduct.

233 Liability of persons other than corporations

State of mind

(1) If, in criminal or civil proceedings under, or arising out of, this Act in respect of conduct engaged in by a person other than a corporation, it is necessary to establish the state of mind of the person, it is sufficient to show that:

(a) the conduct was engaged in by an employee or agent of the person within the scope of his or her actual or apparent authority; and

(b) the employee or agent had that state of mind.

Conduct

(2) If:

(a) conduct is engaged in on behalf of a person other than a corporation by an employee or agent of the person; and

(b) the conduct is within the employee's or agent's actual or apparent authority;

the conduct is taken, for the purposes of criminal or civil proceedings under, or arising out of, this Act, to have been engaged in by the person unless the person proves that the person took reasonable precautions and exercised due diligence to avoid the conduct.

Limitation on imprisonment

(3) Despite any other provision of this Act, if:

(a) a person is convicted of an offence; and

(b) the person would not have been convicted of the offence if subsections (1) and (2) had not been in force;

the person is not liable to be punished by imprisonment for that offence.

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Part 17A—Review of decisions

233A Simplified outline

The following is a simplified outline of this Part:

- Certain decisions of delegates of the AUSTRAC CEO may be reviewed by the Administrative Appeals Tribunal following a process of internal reconsideration by the AUSTRAC CEO.
- Certain decisions of the AUSTRAC CEO may be reviewed by the Administrative Appeals Tribunal.

233B Reviewable decisions

For the purposes of this Act, each of the following decisions of the AUSTRAC CEO is a ***reviewable decision***:

Reviewable decisions

Item	Decision
1	A decision under subsection 75B(6) or section 75C to refuse to register a person as: (a) a remittance network provider; or (b) an independent remittance dealer; or (c) a remittance affiliate of a registered remittance network provider.
2	A decision under section 75E to impose conditions to which a person's registration is subject.
3	A decision under section 75G to cancel a person's registration.
4	A decision under subsection 161(2) to require certain things of a reporting entity.
5	A decision under subparagraph 161(2)(d)(ii) not to allow a longer period.
6	A decision under subsection 191(2) to give a reporting entity a direction.

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233C Giving notice of reviewable decisions

(1) The AUSTRAC CEO must, as soon as practicable after a reviewable decision is made in relation to one or more persons, give a written notice to each of the persons containing:

(a) the terms of the decision; and

(b) for a decision under section 75G to cancel a person's registration—the date the cancellation takes effect; and

(c) the reasons for the decision; and

(d) a statement setting out particulars of the persons' right to have the decision reviewed under this Part.

Note: An example of a reviewable decision made in relation to 2 persons is a decision refusing to register a person as a remittance affiliate of a registered remittance network provider, if the provider applied under subsection 75B(2) for that person to be so registered.

(2) Subsection (1) does not apply to reviewable decisions taken to be made because of the operation of subsection 75B(6) (about deemed refusal).

233D Applications for reconsideration of decisions made by delegates of the AUSTRAC CEO

(1) This section applies to a reviewable decision if the decision is made by a delegate of the AUSTRAC CEO.

Note: Reviewable decisions made by the AUSTRAC CEO personally may be reviewed by the Administrative Appeals Tribunal (see paragraph 233F(b)).

(2) A person affected by a reviewable decision who is dissatisfied with the decision may apply to the AUSTRAC CEO for the decision to be reconsidered.

(3) The application must:

(a) be in the approved form; and

(b) contain the information required by the AML/CTF Rules; and

(c) be made within:

(i) 30 days after the applicant is informed of the decision; or

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(ii) such longer period as the AUSTRAC CEO (whether before or after the end of the 30 day period) allows.

(4) An approved form of an application may provide for verification by statutory declaration of statements in applications.

233E Reconsideration of reviewable decisions

(1) Upon receiving an application under section 233D, the AUSTRAC CEO must reconsider the reviewable decision.

(2) The AUSTRAC CEO must:
  (a) affirm, vary or revoke the reviewable decision; and
  (b) if the AUSTRAC CEO revokes the reviewable decision, make such other decision (if any) as the AUSTRAC CEO thinks appropriate.

(3) The AUSTRAC CEO's reconsideration must be done by the AUSTRAC CEO personally, or by a person to whom the AUSTRAC CEO's power under this section is delegated who:
  (a) was not involved in making the reviewable decision; and
  (b) occupies a position in AUSTRAC that is senior to that occupied by any person involved in making the reviewable decision.

(4) The AUSTRAC CEO must, as soon as practicable after making a decision under subsection (2), give written notice to the applicant of:
  (a) the decision; and
  (b) if the decision is to cancel a person's registration—the date the cancellation takes effect; and
  (c) the reasons for the decision; and
  (d) a statement setting out particulars of the applicant's right to have the decision reviewed by the Administrative Appeals Tribunal.

(5) A decision of the AUSTRAC CEO under subsection (2) has effect (except for the purposes of section 233B) as if it were made under the provision under which the reviewable decision was made.

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233F Review by the Administrative Appeals Tribunal

An application may be made to the Administrative Appeals Tribunal for review of:

(a) a decision of the AUSTRAC CEO under subsection 233E(2); or

(b) a reviewable decision made by the AUSTRAC CEO personally.

233G Failure to comply does not affect validity

A failure to comply with subsection 233C(1) or 233E(4) (about giving notice) in relation to a decision does not affect the validity of the decision.

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Part 18—Miscellaneous

234 Simplified outline

The following is a simplified outline of this Part:

- Proceedings do not lie against a person in relation to anything done, or omitted to be done, in compliance, or in purported compliance, with a requirement under this Act, the regulations or the AML/CTF Rules.
- In proceedings for a contravention of this Act or the regulations, it is a defence if the defendant proves that the defendant took reasonable precautions, and exercised due diligence, to avoid the contravention.
- Partnerships, trusts and unincorporated associations are to be treated as persons for the purposes of this Act.
- This Act is not intended to affect the concurrent operation of State and Territory laws.
- This Act does not affect the law relating to legal professional privilege.
- A contravention of this Act does not affect the validity of any transaction.
- Provision is made in relation to the making of reports to the AUSTRAC CEO etc.
- Provision is made in relation to the performance of non-judicial functions by magistrates.
- This Act does not apply to a designated service specified in the AML/CTF Rules.

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- The AUSTRAC CEO may exempt a person from this Act, or modify the application of this Act to a person.
- There is to be a review of the operation of this Act.
- The Governor-General may make regulations for the purposes of this Act.

235 Protection from liability

(1) An action, suit or proceeding (whether criminal or civil) does not lie against:

(a) a person (the ***first person***); or

(b) an officer, employee or agent of the first person acting in the course of his or her office, employment or agency;

in relation to anything done, or omitted to be done, in good faith by the first person, officer, employee or agent:

(c) in carrying out an applicable customer identification procedure under this Act; or

(d) in fulfilment, or purported fulfilment, of a requirement under this Act not to commence to provide a designated service, or not to continue to provide a designated service; or

(e) in compliance, or in purported compliance, with any other requirement under:

(i) this Act; or

(ii) the regulations; or

(iii) the AML/CTF Rules.

(2) Subsection (1) does not apply to the following proceedings:

(a) criminal proceedings for an offence against this Act or the regulations;

(b) section 175 proceedings for a contravention of a civil penalty provision;

(c) proceedings under the *Proceeds of Crime Act 2002* that relate to this Act.

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236 Defence of taking reasonable precautions, and exercising due diligence, to avoid a contravention

Scope

(1) This section applies to the following proceedings:

(a) criminal proceedings for an offence against the regulations;

(b) section 175 proceedings for a contravention of a civil penalty provision;

(c) proceedings under the *Proceeds of Crime Act 2002* that relate to this Act.

Defence

(2) In the proceedings, it is a defence if the defendant proves that the defendant took reasonable precautions, and exercised due diligence, to avoid the contravention in respect of which the proceedings were instituted.

Note: In criminal proceedings, a defendant bears a legal burden in relation to the matters in subsection (2)—see section 13.4 of the *Criminal Code*.

237 Treatment of partnerships

(1) This Act applies to a partnership as if it were a person, but with the changes set out in this section.

(2) An obligation that would otherwise be imposed on the partnership by this Act is imposed on each partner instead, but may be discharged by any of the partners.

(3) An offence against this Act that would otherwise be committed by the partnership is taken to have been committed by each partner.

(4) A partner does not commit an offence because of subsection (3) if the partner:

(a) does not know of the circumstances that constitute the contravention of the provision concerned; or

(b) knows of those circumstances but takes all reasonable steps to correct the contravention as soon as possible after the partner becomes aware of those circumstances.

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

(5) This section applies to a breach of a civil penalty provision in a corresponding way to the way in which it applies to an offence.

238 Treatment of unincorporated associations

(1) This Act applies to an unincorporated association as if it were a person, but with the changes set out in this section.

(2) An obligation that would otherwise be imposed on the association by this Act is imposed on each member of the association's committee of management instead, but may be discharged by any of the members.

(3) An offence against this Act that would otherwise be committed by the association is taken to have been committed by each member of the association's committee of management.

(4) A member of the association's committee of management does not commit an offence because of subsection (3) if the member:

(a) does not know of the circumstances that constitute the contravention of the provision concerned; or

(b) knows of those circumstances but takes all reasonable steps to correct the contravention as soon as possible after the member becomes aware of those circumstances.

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

(5) This section applies to a breach of a civil penalty provision in a corresponding way to the way in which it applies to an offence.

239 Treatment of trusts with multiple trustees

(1) If a trust has 2 or more trustees, this Act applies to the trust as if it were a person, but with the changes set out in this section.

Note: A trust is a person for the purposes of this Act (see the definition of ***person*** in section 5).

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(2) An obligation that would otherwise be imposed on the trust by this Act is imposed on each trustee instead, but may be discharged by any of the trustees.

(3) An offence against this Act that would otherwise be committed by the trust is taken to have been committed by each trustee.

(4) A trustee does not commit an offence because of subsection (3) if the trustee:

(a) does not know of the circumstances that constitute the contravention of the provision concerned; or

(b) knows of those circumstances but takes all reasonable steps to correct the contravention as soon as possible after the trustee becomes aware of those circumstances.

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

(5) This section applies to a breach of a civil penalty provision in a corresponding way to the way in which it applies to an offence.

240 Concurrent operation of State and Territory laws

This Act is not intended to exclude or limit the operation of a law of a State or Territory that is capable of operating concurrently with this Act.

241 Act not to limit other powers

(1) This Act does not limit any power that a person has, under any other law, to obtain information.

(2) This Act does not limit any power that a customs officer or police officer has under any other law.

242 Law relating to legal professional privilege not affected

This Act does not affect the law relating to legal professional privilege.

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243 Validity of transactions

A contravention of this Act, the regulations or the AML/CTF Rules does not affect the validity of any transaction.

244 Reports to the AUSTRAC CEO etc.

(1) A report to the AUSTRAC CEO by a person under this Act, or a report to a customs officer or a police officer by a person under section 53, 55 or 59, must be:
   (a) signed by the person; or
   (b) otherwise authenticated by the person in an approved way.

(2) A report to the AUSTRAC CEO by a person under this Act must be given to the AUSTRAC CEO:
   (a) in the manner set out in section 28A of the *Acts Interpretation Act 1901*; or
   (b) in such other manner and form as is approved in relation to the person or to a class of persons that includes the person.

(3) This section does not affect the operation of the *Electronic Transactions Act 1999*.

245 Arrangements with Governors of States etc.

States

(1) The Governor-General may make arrangements with the Governor of a State with respect to the administration of this Act, including arrangements for the performance of the functions of a magistrate under this Act by a magistrate of that State.

(2) The Governor-General may arrange with the Governor of a State with whom an arrangement is in force under subsection (1) for the variation or revocation of the arrangement.

Australian Capital Territory

(3) The Governor-General may make arrangements with the Chief Minister of the Australian Capital Territory with respect to the administration of this Act, including arrangements for the

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performance of the functions of a magistrate under this Act by a magistrate of the Australian Capital Territory.

(4) The Governor-General may arrange with the Chief Minister of the Australian Capital Territory for the variation or revocation of an arrangement in force under subsection (3).

Northern Territory

(5) The Governor-General may make arrangements with the Administrator of the Northern Territory with respect to the administration of this Act, including arrangements for the performance of the functions of a magistrate under this Act by a magistrate of the Northern Territory.

(6) The Governor-General may arrange with the Administrator of the Northern Territory for the variation or revocation of an arrangement in force under subsection (5).

Norfolk Island

(7) The Governor-General may make arrangements with the Administrator of Norfolk Island with respect to the administration of this Act, including arrangements for the performance of the functions of a magistrate under this Act by a magistrate of Norfolk Island.

(8) The Governor-General may arrange with the Administrator of Norfolk Island for the variation or revocation of an arrangement in force under subsection (7).

(9) A copy of each instrument by which an arrangement under this section is made, varied or revoked is to be published in the *Gazette*.

Legislative Instruments Act

(10) An instrument by which an arrangement under this section is made, varied or revoked is not a legislative instrument.

246 This Act does not limit other information-gathering powers

This Act does not limit:

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(a) any power conferred on the Commissioner of Taxation, by any other law, to obtain information; or

(b) any power conferred on any other person or body, by any other law, to obtain information.

247 General exemptions

(1) This Act does not apply to a designated service that is of a kind specified in the AML/CTF Rules.

(2) The AML/CTF Rules may provide that a specified provision of this Act does not apply to a designated service that is of a kind specified in the AML/CTF Rules.

(3) This Act does not apply to a designated service that is provided in circumstances specified in the AML/CTF Rules.

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

248 Exemptions and modifications by the AUSTRAC CEO

(1) The AUSTRAC CEO may, by written instrument:

(a) exempt a specified person from one or more specified provisions of this Act; or

(b) declare that this Act applies in relation to a specified person as if one or more specified provisions of this Act were modified as specified in the declaration.

(2) An exemption may apply:

(a) unconditionally; or

(b) subject to specified conditions.

(3) A person to whom a condition specified in an exemption applies must comply with the condition.

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

(5) A copy of an exemption or declaration must be made available on AUSTRAC's website.

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(6) If conduct engaged in by a person would not have constituted:

(a) an offence; or

(b) a contravention of a civil penalty provision:

if a particular declaration under paragraph (1)(b) had not been made, that conduct does not constitute an offence or a contravention of a civil penalty provision unless, before the conduct occurred:

(c) a copy of the declaration was made available on AUSTRAC's website; or

(d) the AUSTRAC CEO gave the person a copy of the declaration.

In a prosecution for an offence to which this subsection applies, the prosecution must prove that paragraph (c) or (d) was complied with before the conduct occurred.

(7) An instrument under subsection (1) is not a legislative instrument.

249 Specification by class

To avoid doubt, a reference in this Act to a class or kind of matter or thing does not, by implication, affect the application of:

(a) subsection 13(3) of the *Legislative Instruments Act 2003*; or

(b) subsection 33(3AB) of the *Acts Interpretation Act 1901*.

250 Schedule 1 (alternative constitutional basis)

Schedule 1 has effect.

251 Review of operation of Act

(1) Before the end of the period of 7 years after the commencement of this section, the Minister must cause to be conducted a review of the operation of this Act, the regulations and the AML/CTF Rules.

(2) The Minister must cause to be prepared a report of the review under subsection (1).

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(3) The Minister must cause copies of the report to be tabled in each House of the Parliament within 15 sittings days of that House after the completion of the preparation of the report.

252 Regulations

(1) The Governor-General may make regulations prescribing matters:

(a) required or permitted to be prescribed by this Act; or

(b) necessary or convenient to be prescribed for carrying out or giving effect to this Act.

Penalties

(2) The regulations may prescribe penalties for offences against the regulations. A penalty must not be more than 50 penalty units.

Fees

(3) The regulations may make provision for and in relation to fees payable in respect of the performance of a function, or the exercise of a power, by the AUSTRAC CEO.

(4) A fee must not be such as to amount to taxation.

(5) A fee is payable to the Commonwealth.

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Schedule 1—Alternative constitutional basis

Note: See section 250.

1 Alternative constitutional basis

(1) Without limiting its effect apart from this clause, this Act also has effect as provided by this clause.

Limited types of designated services

(2) This Act also has the effect it would have if subclause (3) had not been enacted and each reference in this Act to a designated service were, by express provision, confined to a designated service where:

(a) the designated service consists of:

(i) issuing a bill of exchange or a promissory note; or

(ii) in the capacity of agent of a person, acquiring or disposing of a bill of exchange, or a promissory note, on behalf of the person; or

(b) both:

(i) the provision of the designated service involves a transaction; and

(ii) the transaction involves the transfer of physical currency from one person to another; or

(c) the customer of the designated service is a constitutional corporation; or

(d) the designated service is provided by a constitutional corporation; or

(e) the designated service is provided in the course of, or in relation to, any of the following:

(i) trade or commerce between Australia and places outside Australia;

(ii) trade or commerce among the States;

(iii) trade or commerce within a Territory, between a State or Territory or between 2 Territories;

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(iv) the supply of goods or services to the Commonwealth or an authority or instrumentality of the Commonwealth; or

(f) the designated service is provided in the course of, or in relation to, banking to which paragraph 51(xiii) of the Constitution applies; or

(g) the designated service is provided in the course of, or in relation to, insurance to which paragraph 51(xiv) of the Constitution applies; or

(h) the designated service is provided using a postal, telegraphic, telephonic or other like service (within the meaning of paragraph 51(v) of the Constitution); or

(i) the designated service is provided:

(i) in a Territory; or

(ii) in a Commonwealth place; or

(iii) in a foreign country; or

(j) the designated service is provided by a person:

(i) at or through a permanent establishment of the person in a Territory; or

(ii) at or through a permanent establishment of the person in a Commonwealth place; or

(iii) at or through a permanent establishment of the person in a foreign country.

Note: See also subclause (6) (extended meaning of ***permanent establishment***).

Administration and enforcement of taxation laws and other laws

(3) This Act also has the effect it would have if:

(a) subclause (2) had not been enacted; and

(b) this Act did not apply except to the extent to which it:

(i) facilitates the administration or enforcement of taxation laws; or

(ii) facilitates the administration or enforcement of laws of the Commonwealth or of the Territories (other than taxation laws).

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Cross-border movements of bearer negotiable instruments

(4) Division 3 of Part 4 and section 200 also have the effect they would have if each reference in that Division and that section to a bearer negotiable instrument were, by express provision, confined to a bearer negotiable instrument that is:

(a) a bill of exchange; or

(b) a promissory note.

Correspondent banking

(5) Part 8 and section 117 also have the effect they would have if:

(a) each reference in section 95, 96 or 99 to another person were, by express provision, confined to another person that is:

(i) a constitutional corporation; or

(ii) an individual who is physically present in a foreign country; and

(b) each reference in section 96, 97 or 98 to another financial institution were, by express provision, confined to another financial institution that is:

(i) a constitutional corporation; or

(ii) an individual who is physically present in a foreign country.

*Extended meaning of **permanent establishment***

(6) For the purposes of paragraph (2)(j) of this clause:

(a) subsection 21(2) has effect as if each reference in that subsection to a country included a reference to:

(i) a Territory; and

(ii) a Commonwealth place; and

(b) ignore subsection 21(3).

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Endnotes

Endnote 1—About the endnotes

The endnotes provide details of the history of this legislation and its provisions. The following endnotes are included in each compilation:

Endnote 1—About the endnotes
Endnote 2—Abbreviation key
Endnote 3—Legislation history
Endnote 4—Amendment history
Endnote 5—Uncommenced amendments
Endnote 6—Modifications
Endnote 7—Misdescribed amendments
Endnote 8—Miscellaneous

If there is no information under a particular endnote, the word "none" will appear in square brackets after the endnote heading.

Abbreviation key—Endnote 2

The abbreviation key in this endnote sets out abbreviations that may be used in the endnotes.

Legislation history and amendment history—Endnotes 3 and 4

Amending laws are annotated in the legislation history and amendment history.

The legislation history in endnote 3 provides information about each law that has amended the compiled law. The information includes commencement information for amending laws and details of application, saving or transitional provisions that are not included in this compilation.

The amendment history in endnote 4 provides information about amendments at the provision level. It also includes information about any provisions that have expired or otherwise ceased to have effect in accordance with a provision of the compiled law.

Uncommenced amendments—Endnote 5

The effect of uncommenced amendments is not reflected in the text of the compiled law but the text of the amendments is included in endnote 5.

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Endnote 1—About the endnotes

Modifications—Endnote 6
If the compiled law is affected by a modification that is in force, details of the modification are included in endnote 6.

Misdescribed amendments—Endnote 7
An amendment is a misdescribed amendment if the effect of the amendment cannot be incorporated into the text of the compilation. Any misdescribed amendment is included in endnote 7.

Miscellaneous—Endnote 8
Endnote 8 includes any additional information that may be helpful for a reader of the compilation.

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Endnote 2—Abbreviation key

ad = added or inserted
am = amended
c = clause(s)
Ch = Chapter(s)
def = definition(s)
Dict = Dictionary
disallowed = disallowed by Parliament
Div = Division(s)
exp = expired or ceased to have effect
hdg = heading(s)
LI = Legislative Instrument
LIA = *Legislative Instruments Act 2003*
mod = modified/modification
No = Number(s)
o = order(s)
Ord = Ordinance
orig = original
par = paragraph(s)/subparagraph(s)
/sub-subparagraph(s)
pres = present
prev = previous
(prev) = previously
Pt = Part(s)
r = regulation(s)/rule(s)
Reg = Regulation/Regulations
reloc = relocated
renum = renumbered
rep = repealed
rs = repealed and substituted
s = section(s)
Sch = Schedule(s)
Sdiv = Subdivision(s)
SLI = Select Legislative Instrument
SR = Statutory Rules
Sub-Ch = Sub-Chapter(s)
SubPt = Subpart(s)

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Endnote 3—Legislation history

Act	Number and year	Assent	Commencement	Application, saving and transitional provisions
Anti-Money Laundering and Counter-Terrorism Financing Act 2006	169, 2006	12 Dec 2006	ss. 1 and 2: Royal Assent ss. 27–35, 37–39, 80–93, 111–114 and 116: 12 Dec 2007 ss. 36, 40–46 and 49–51: 12 Dec 2008 ss. 47, 48, 94–100 and 117: 12 June 2007 Remainder: 13 Dec 2006	
Anti-Money Laundering and Counter-Terrorism Financing Amendment Act 2007	52, 2007	12 Apr 2007	Schedule 1 (items 2–13, 15–19, 21–52, 66–68): 13 Apr 2007 Schedule 1 (items 14, 20): *(a)*	Sch. 1 (items 66–68)
Financial Sector Legislation Amendment (Simplifying Regulation and Review) Act 2007	154, 2007	24 Sept 2007	Schedule 1 (items 156, 157): 1 Jan 2008 Schedule 1 (item 296): Royal Assent	Sch. 1 (item 296)
First Home Saver Accounts (Consequential Amendments) Act 2008	45, 2008	25 June 2008	Schedule 3 (items 1–4): 26 June 2008	—
Statute Law Revision Act 2008	73, 2008	3 July 2008	Schedule 1 (item 5): *(b)*	—
First Home Saver Accounts (Further Provisions) Amendment Act 2008	92, 2008	30 Sept 2008	Schedule 1 (items 1, 26): 1 Oct 2008	Sch. 1 (item 26)
Customs Legislation Amendment (Name Change) Act 2009	33, 2009	22 May 2009	Schedule 2 (item 5): 23 May 2009	—

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Endnote 3—Legislation history

Act	Number and year	Assent	Commencement	Application, saving and transitional provisions
Crimes Legislation Amendment (Serious and Organised Crime) Act (No. 2) 2010	4, 2010	19 Feb 2010	Schedule 5 (items 25–36): 20 Feb 2010	Sch. 5 (items 29, 31, 36)
Statute Law Revision Act 2010	8, 2010	1 Mar 2010	Schedule 5 (items 4–9): Royal Assent Schedule 5 (item 137(a)): *(c)*	—
Freedom of Information Amendment (Reform) Act 2010	51, 2010	31 May 2010	Schedule 5 (item 1) and Schedule 7: *(d)*	Sch. 7
Trade Practices Amendment (Australian Consumer Law) Act (No. 2) 2010	103, 2010	13 July 2010	Schedule 6 (items 1, 21–23, 157, 158): 1 Jan 2011	—
National Security Legislation Amendment Act 2010	127, 2010	24 Nov 2010	Schedule 10 (items 2, 3): 25 Nov 2010	—
Tax Laws Amendment (Confidentiality of Taxpayer Information) Act 2010	145, 2010	16 Dec 2010	Schedule 2 (items 3, 4, 123(1)): 17 Dec 2010	Sch. 2 (item 123(1))
Law and Justice Legislation Amendment (Identity Crimes and Other Measures) Act 2011	3, 2011	2 Mar 2011	Schedule 4: 3 Mar 2011	Sch. 4 (item 8)
Human Services Legislation Amendment Act 2011	32, 2011	25 May 2011	Schedule 4 (items 47–49): 1 July 2011	—
Acts Interpretation Amendment Act 2011	46, 2011	27 June 2011	Schedule 2 (items 67–72) and Schedule 3 (items 10, 11): 27 Dec 2011	Sch. 3 (items 10, 11)

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Endnote 3—Legislation history

Act	Number and year	Assent	Commencement	Application, saving and transitional provisions
Australian Transaction Reports and Analysis Centre Supervisory Cost Recovery Levy (Consequential Amendments) Act 2011	56, 2011	28 June 2011	Schedule 1: 1 Nov 2011 (*see* F2011L02035) Schedule 2 (items 1–6): *(e)* Schedule 2 (item 7): *(e)* Remainder: Royal Assent	Sch. 2 (item 7)
Combating the Financing of People Smuggling and Other Measures Act 2011	60, 2011	28 June 2011	Schedule 1 (items 1–11): 1 Nov 2011 (*see* F2011L02019) Schedule 1 (items 14–48, 53–57): 1 Nov 2011 Schedule 1 (items 12, 13, 49–52, 58), Schedule 2 and Schedule 3 (items 1–10): Royal Assent	Sch. 1 (items 49–58)
Carbon Credits (Consequential Amendments) Act 2011	102, 2011	15 Sept 2011	Schedule 1 (items 1–4): 8 Dec 2011 (*see* s. 2(1))	—
Inspector-General of Intelligence and Security Amendment Act 2011	118, 2011	14 Oct 2011	Schedule 2: 15 Oct 2011	—
Clean Energy (Consequential Amendments) Act 2011	132, 2011	18 Nov 2011	Schedule 1 (items 1–3): 2 Apr 2012 (*see* s. 2(1))	—
Australian Charities and Not-for-profits Commission (Consequential and Transitional) Act 2012	169, 2012	3 Dec 2012	Schedule 2 (items 149, 150): 3 Dec 2012 (*see* s. 2(1))	—
Privacy Amendment (Enhancing Privacy Protection) Act 2012	197, 2012	12 Dec 2012	Schedule 5 (items 9, 10, 102–127): 12 Mar 2014	—

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Act	Number and year	Assent	Commencement	Application, saving and transitional provisions
Crimes Legislation Amendment (Law Enforcement Integrity, Vulnerable Witness Protection and Other Measures) Act 2013	74, 2013	28 June 2013	Schedule 1 (items 1–3) and Schedule 4 (items 1–33): 29 June 2013 Schedule 4 (item 34): 12 Mar 2014	Sch. 1 (item 3) and Sch. 4 (item 33)

Number and year	FRLI registration or gazettal	Commencement	Application, saving and transitional provisions
2008 No. 2	30 Jan 2008 (*see* F2008L00137)	31 Jan 2008	—

(a) Subsection 2(1) (items 3 and 5) of the *Anti-Money Laundering and Counter-Terrorism Financing Amendment Act 2007* provides as follows:

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

Commencement information

Column 1	Column 2	Column 3
Provision(s)	**Commencement**	**Date/Details**
3. Schedule 1, item 14	Immediately after the commencement of section 42 of the *Anti-Money Laundering and Counter-Terrorism Financing Act 2006*.	12 December 2008
5. Schedule 1, item 20	Immediately after the commencement of section 85 of the *Anti-Money Laundering and Counter-Terrorism Financing Act 2006*.	12 December 2007

(b) Subsection 2(1) (item 6) of the *Statute Law Revision Act 2008* provides as follows:

(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.

Endnote 3—Legislation history

Provision(s)	Commencement	Date/Details
6. Schedule 1, item 5	Immediately after the commencement of section 130 of the *Anti-Money Laundering and Counter-Terrorism Financing Act 2006*.	13 December 2006

(c) Subsection 2(1) (items 31 and 38) of the *Statute Law Revision Act 2010* provides as follows:

(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.

Provision(s)	Commencement	Date/Details
31. Schedule 5, items 1 to 51	The day this Act receives the Royal Assent.	1 March 2010
38. Schedule 5, Parts 2 and 3	Immediately after the provision(s) covered by table item 31.	1 March 2010

(d) Subsection 2(1) (item 7) of the *Freedom of Information Amendment (Reform) Act 2010* provides as follows:

(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.

Provision(s)	Commencement	Date/Details
7. Schedules 4 to 7	Immediately after the commencement of section 3 of the *Australian Information Commissioner Act 2010*. However, if section 3 of the *Australian Information Commissioner Act 2010* does not commence, the provision(s) do not commence at all.	1 November 2010

(e) Subsection 2(1) (items 2–4) of the *Australian Transaction Reports and Analysis Centre Supervisory Cost Recovery Levy (Consequential Amendments) Act 2011* provides as follows:

(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.

Provision(s)	Commencement	Date/Details
2. Schedule 1	A single day to be fixed by Proclamation. However, if any of the provision(s) 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.	1 November 2011 (*see* F2011L02035)

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Provision(s)	Commencement	Date/Details
3. Schedule 2, Part 1	The later of: (a) the commencement of item 31 of Schedule 1 to the *Combating the Financing of People Smuggling and Other Measures Act 2011*; and (b) immediately after the commencement of the provision(s) covered by table item 2. However, the provision(s) do not commence at all unless both of the events mentioned in paragraphs (a) and (b) occur.	1 November 2011 (paragraph (b) applies)
4. Schedule 2, Part 2	Immediately after the commencement of the provision(s) covered by table item 2.	1 November 2011

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Endnote 4—Amendment history

Provision affected	How affected
Part 1	
Notes 2, 3 to s. 3(3)	am. No. 8, 2010
s. 4	am. No. 60, 2011
s. 5	am. Nos. 52 and 154, 2007; Nos. 45 and 92, 2008; No. 33, 2009; Nos. 4, 8 and 103, 2010; Nos. 32, 56, 60, 102, 118 and 132, 2011; No 169 and 197, 2012; No. 74, 2013
s. 6	am. No. 52, 2007; SLI 2008 No. 2; No. 45, 2008; Nos. 4 and 103, 2010; Nos. 60, 102 and 132, 2011; No. 169, 2012
s. 10	am. No. 4, 2010
Part 2	
Division 5A	
Div. 5A of Part 2	ad. No. 60, 2011
hdg to s 35A	rs No 197, 2012
s 35A	ad No 60, 2011
	am No 197, 2012
hdg to s 35B	rs No 197, 2012
s 35B	ad No 60, 2011
	am No 197, 2012
s 35C	ad No 60, 2011
	am No 197, 2012
s 35D	ad No 60, 2011
	rs No 197, 2012
hdg to s 35E	rs No 197, 2012
s 35E	ad No 60, 2011
	am No 197, 2012
s 35F	ad No 60, 2011
	am No 197, 2012
s 35G	ad No 60, 2011
	am No 197, 2012
s 35H	ad No 60, 2011

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Provision affected	How affected
s 35J	ad No 60, 2011
s 35K	ad No 60, 2011
s 35L	ad No 60, 2011
	rs No 197, 2012
Division 6	
s. 36	am. No. 60, 2011
Division 7	
s. 37	am. No. 60, 2011
Part 3	
Division 2	
s. 42	am. No. 52, 2007; No. 60, 2011
Division 3	
s. 44	am. No. 60, 2011
Division 4	
s. 46	am. No. 4, 2010
Division 6	
s. 49	am. No. 60, 2011
s. 49A	ad. No. 60, 2011
Part 3A	
Part 3A	ad. No. 56, 2011
ss. 51A–51G	ad. No. 56, 2011
Part 4	
Division 3	
s. 59	am. No. 4, 2010
Division 4	
ss. 61, 62	am. No. 3, 2011
Part 5	
Division 3	
s. 66	am. No. 52, 2007
Division 4	
s. 67	am. No. 52, 2007
s. 71	am. No. 52, 2007

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Endnote 4—Amendment history

Provision affected	How affected
Part 6	
Heading to Part 6	rs. No. 60, 2011
Division 1	
Heading to Div. 1 of Part 6	ad. No. 60, 2011
s. 73	am. No. 60, 2011; No. 74, 2013
Division 2	
Heading to Div. 2 of Part 6	ad. No. 60, 2011
Heading to s. 74	am. No. 60, 2011
s. 74	am. No. 60, 2011
Division 3	
Div. 3 of Part 6	ad. No. 60, 2011
s. 75	rs. No. 60, 2011
s. 75A	ad. No. 60, 2011
s. 75B	ad. No. 60, 2011
Note to s. 75B(6)	ad. No. 74, 2013
s. 75C	ad. No. 60, 2011
Note to s. 75C(2)	ad. No. 74, 2013
Note to s. 75C(5)	rep. No. 74, 2013
s. 75D	ad. No. 60, 2011
s. 75E	ad. No. 60, 2011
Note to s. 75E(1)	ad. No. 74, 2013
s. 75F	ad. No. 60, 2011
s. 75G	ad. No. 60, 2011
	am. No. 74, 2013
Note to s. 75G(1)	ad. No. 74, 2013
s. 75H	ad. No. 60, 2011
ss. 75J–75N	ad. No. 60, 2011
s. 75P	ad. No. 60, 2011
Heading to Div. 4 of Part 6	rep. No. 74, 2013
Div. 4 of Part 6	ad. No. 60, 2011
s. 75Q	ad. No. 60, 2011
	am. No. 74, 2013

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Provision affected	How affected
Note to s. 75Q(1)	ad. No. 74, 2013
s. 75R	ad. No. 60, 2011
	rep. No. 74, 2013
s. 75S	ad. No. 60, 2011
	rep. No. 74, 2013
Division 5	
Div. 5 of Part 6	ad. No. 60, 2011
s. 75T	ad. No. 60, 2011
ss. 76–79	rep. No. 60, 2011
s. 79A	ad. No. 52, 2007
	rep. No. 60, 2011
Part 7	
Division 3	
s. 84	am. No. 60, 2011
s. 85	am. No. 52, 2007
Part 11	
Division 2	
s. 121	am. No. 74, 2013
Division 3	
s. 123	am. No. 52, 2007; No. 4, 2010; No. 60, 2011; No. 74, 2013
s. 124	am. No. 3, 2011
Division 4	
Subdivision A	
s. 125	am. No. 145, 2010
Subdivision B	
s 126	am No 197, 2012
s. 127	am. No. 52, 2007; No. 60, 2011; No. 74, 2013
s. 128	am. No. 52, 2007; No. 127, 2010; Nos. 3 and 60, 2011
Subdivision C	
s. 130	am. No. 3, 2011; No. 74, 2013
Note to s. 130(3)	am. No. 73, 2008
s. 131	am. No. 3, 2011

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Endnote 4—Amendment history

Provision affected	How affected
Subdivision D	
s. 133A	ad. No. 52, 2007
ss. 133B, 133C	ad. No. 60, 2011
Part 12	
s. 136	am. No. 52, 2007; No. 74, 2013
s. 137	am. No. 52, 2007; No. 74, 2013
s. 139	am. No. 52, 2007; No. 74, 2013
s. 140	am. No. 52, 2007
s. 141	am. No. 52, 2007
Part 13	
Division 2	
s. 145	am. No. 52, 2007; No. 74, 2013
Division 7	
Note to s. 161(2)	ad. No. 74, 2013
Note 1 to s. 164(1)	am. No. 46, 2011
s. 164A	ad. No. 52, 2007
	rep. No. 74, 2013
Part 14	
s. 167	am. No. 60, 2011
Part 15	
Division 3	
Heading to Div. 3 of Part 15	rs. No. 60, 2011
s. 184	am. Nos. 56 and 60, 2011
s. 185	am. No. 60, 2011
Heading to s. 186	am. No. 60, 2011
Heading to s. 186A	am. No. 56, 2011
s. 186A	ad. No. 60, 2011
	am. No. 56, 2011
ss. 188, 189	am. No. 60, 2011
Division 4	
s. 190	am. No. 60, 2011
Division 5	

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Provision affected	How affected
Note to s. 191(2)	ad. No. 74, 2013
s. 191A	ad. No. 52, 2007
	rep. No. 74, 2013
Division 7	
s. 197	am. No. 52, 2007; No. 8, 2010
Part 16	
Division 3	
Subdivision A	
s. 212	am. No. 51, 2010
Subdivision B	
Note to s. 214(3)	rs. No. 46, 2011
s. 221	am. No. 46, 2011
Note to s. 221	ad. No. 46, 2011
Division 4	
s. 225	ad. No. 74, 2013
Division 6	
s. 228	am. No. 52, 2007
Part 17A	
Part 17A	ad. No. 74, 2013
s. 223A	ad. No. 74, 2013
s. 223B	ad. No. 74, 2013
s. 223C	ad. No. 74, 2013
s. 223D	ad. No. 74, 2013
s. 223E	ad. No. 74, 2013
s. 223F	ad. No. 74, 2013
s. 223G	ad. No. 74, 2013
Part 18	
s. 248	am. No. 8, 2010
s. 249	am. No. 46, 2011

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Endnote 5—Uncommenced amendments [none]

Endnote 6—Modifications [none]

Endnote 7—Misdescribed amendments [none]

Endnote 8—Miscellaneous [none]