SUPREME COURT
OF NEW SOUTH WALES

AUSTRALIA'S NEW ANTI-MONEY LAUNDERING/ COUNTER-TERRORISM FINANCING REGIME:

IMPLICATIONS FOR THE LEGAL PROFESSION

17 February 2026, 5pm
Banco Court, Law Courts building

NEW SOUTH WALES
BAR ASSOCIATION

THE LAW SOCIETY
OF NEW SOUTH WALES

Law Council
OF AUSTRALIA

Overview—Australia's AML/CTF Regime

Australian Government
AUSTRAC

- Core objective—detect, deter, and disrupt money laundering, terrorism financing, and the crimes they enable
- Money laundering risks and challenges in Australia
  - Drug offences—single largest source of money laundered in Australia
  - Tax and revenue crimes, government-funded program fraud, proceeds of illicit tobacco sales, the global proceeds of scams
  - Exploitation of lawful domestic financial channels, banks, remitters and casinos, luxury goods, real estate, digital currency, bullion …
  - Links to criminal markets and organisations in Asia

Overview—Australia's AML/CTF Regime

Australian Government
AUSTRAC

- Addressing gaps in Australia's AML/CTF framework
  - Original focus on traditional financial institutions and services, like banks, no longer adequate to address modern criminal methods, and
  - Need to align with international standards established by the Financial Action Task Force (**FATF**)
- November 2024 legislative reforms to the AML/CTF Act
- Money laundering process: placement, layering, integration
- Money laundering in the context of the legal profession
  - Money laundering red flags

Structure of the AML/CTF Regime

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The Act: *Anti-Money Laundering and Counter-Terrorism Financing Act 2006* (Cth) (**AML/CTF Act**). Significantly amended in late 2024 by the *Anti-Money Laundering and Counter Terrorism Financing Amendment Act 2024* (Cth)—expanded the AML/CTF Act to 'Tranche 2' entities (lawyers, real estate agents, conveyancers)

The Rules: Anti-Money Laundering and Counter-Terrorism Financing Rules Instrument 2007 (No. 1) (Rules), provide detail on the broader obligations in the AML/CTF Act

AUSTRAC Guidance: AUSTRAC has produced online guidance documents, including its Reforms Guidance, which—among other things—sets out AUSTRAC's interpretation of the AML/CTF Act.

AUSTRAC Starter Kits: Customisable online compliance program for small reporting entities. Designed for reporting entities with 15 employees or less, but can be adapted for use by larger entities

The legislative framework—Implementation

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Phased transition, ending on 1 July 2026

Already in force

- Schedule 9 Investigation and examination powers
- *Financial Transaction Reports Act 1988* (Cth) repealed in January 2025

31 March 2026

- Enrolment commences for Tranche 2 (deadline 29 July 2026 Commencement of Regime for Tranche 1;
- Tipping off offence

1 July 2026

- Commencement for Tranche 2 entities—BUT Transitional rules pending (including delaying commencement of independent review obligation)

The legislative framework— Scope of application

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- The Act regulates ‘reporting entities’
- A ‘reporting entity’ is a ‘person’ who provides ‘designated services’ to customers (clients)
  - Person = an individual, a company, a trust, a partnership, a corporation sole, a body politic (s 5)
  - Designated services are listed in section 6
- If you are a ‘person’ that provides ‘designated services’ to clients, the Regime applies to you in relation to the designated service/s you provide

So … what are the designated services?

Designated services—FATF Recommendations

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- The Regime is designed to give effect to the FATF Recommendations (which includes the Interpretative Notes), which establish standards to address ML/TF that countries should implement through a comprehensive framework of measures, adapted to their circumstances
- Predicated on a 'risk-based approach', under which reporting entities first identify, assess and understand their ML/TF risks and then adopt appropriate mitigatory measures

Designated services—AML/CTF Act

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- Section 6 of the AML/CTF Act contains tables setting out what a ‘designated service’ is in the context of specific industries, and who the ‘customer’ of the service is

- Section 6(5B) contains the newly regulated ‘professional services’ which are relevant to the legal profession

Designated services—AML/CTF Act

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Table 6—Professional services		
Item	**Provision of a designated service**	**Customer**
1	assisting a person in the planning or execution of a transaction, or otherwise acting for or on behalf of a person in a transaction, to sell, buy or otherwise transfer real estate, where: (a) the service is provided in the course of carrying on a business; and (b) the sale, purchase or other transfer is not pursuant to, or resulting from, an order of a court or tribunal	the person
2	assisting a person in the planning or execution of a transaction, or otherwise acting for or on behalf of a person in a transaction, to sell, buy or otherwise transfer a body corporate or legal arrangement, where: (a) the service is provided in the course of carrying on a business; and (b) the sale, purchase or other transfer is not pursuant to, or resulting from, an order of a court or tribunal	the person
3	receiving, holding and controlling (including disbursing) or managing a person's: (a) money; or (b) accounts; or (c) securities and securities accounts; or (d) virtual assets; or (e) other property; as part of assisting the person in the planning or execution of a transaction, or otherwise acting for or on behalf of a person in a transaction, in the course of carrying on a business (other than in a circumstance covered by subsection (5C)	the person

Designated services—AML/CTF Act

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Table 6—Professional services		
Item	**Provision of a designated service**	**Customer**
4	assisting a person in organising, planning or executing a transaction, or otherwise acting for or on behalf of a person in a transaction, for equity or debt financing relating to: (a) a body corporate (or proposed body corporate); or (b) a legal arrangement (or proposed legal arrangement); in the course of carrying on a business	the person
5	selling or transferring a shelf company, in the course of carrying on a business	the buyer or transferee
6	assisting a person to plan or execute, or otherwise acting on behalf of a person in, the creation or restructuring of: (a) a body corporate (other than a corporation under the *Corporations (Aboriginal and Torres Strait Islander) Act 2006*); or (b) a legal arrangement; in the course of carrying on a business	the person, *and*: (a) if the body corporate is a company and the service is creating the company—the beneficial owners and directors of the company; or (b) if the legal arrangement is an express trust and the service is creating the express trust—the trustee, settlor and beneficiaries of the trust

Designated services—AML/CTF Act

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Table 6—Professional services		
Item	**Provision of a designated service**	**Customer**
7	acting as, or arranging for another person to act as, any of the following, on behalf of a person (the nominator), in the course of carrying on a business: (a) a director or secretary of a company; (b) a power of attorney of a body corporate or legal arrangement; (c) a partner in a partnership; (d) a trustee of an express trust; (e) a position in any other legal arrangement that is functionally equivalent to a position mentioned in any of the above paragraphs; other than in a circumstance covered by subsection (5E)	the nominator
8	acting as, or arranging for another person to act as, a nominee shareholder of a body corporate or legal arrangement, on behalf of a person (the nominator), in the course of carrying on a business	the nominator
9	providing a registered office address or principal place of business address of a body corporate or legal arrangement, in the course of carrying on a business	the person to whom the service is provided

Designated services—
Table 6 Carve outs and exclusions

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- **Court order exclusion:** Items 1, 2, and 3 do not apply if the designated service occurs pursuant to, or resulting from, a court or tribunal order
- **Item 3 Carve outs:** Per section 6(5C) and (5D), Item 3 does not apply in certain circumstances, including where:
  - the money, etc., is being held or managed is payment by the person for the provision of goods or services by the business
  - the business does not provide any designated service other than the Item 3 service, *and* the money, etc., being held or managed is for payments reasonably incidental to the provision of a service that is *not* a designated service—for example, fees paid to a barrister for representation in legal proceedings or property management services
  - the service is any other designated service
  - a circumstance specified in the AML/CTF Rules.

Designated services—
Scope of application of Table 6

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- Essentially: somewhat unclear
- Some words used in the Items are capable of an extremely wide interpretation, which—if applied—would catch activities with no or negligible ML/TF and have absurd results
  - 'assisting a person'—could conceivably catch anyone who provides any legal assistance to a client that is related to a designated service
- Also exceeds the FATF recommendation
  - FATF refers to '*prepare for or carry out transactions*…', and its Guidance says that advice work and work peripheral to a relevant transaction should not be caught
  - AML Act refers to 'assisting in the planning or execution of a transaction.. or otherwise acting…for a person in a transaction…'
- Scope of the court order exclusion unclear
- Commencement of designated service unclear

Designated services—
AUSTRAC Reforms Guidance

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- AUSTRAC has developed and published Reforms Guidance clarifying its interpretation of the reforms, which provides that:
- 'Assisting' is confined to 'directly advancing' a designated service, cf activities which merely 'influence' an outcome (ie, there must be a causative link to a transaction, etc.)
- 'Assisting', 'planning', 'organising' or 'otherwise acting for on behalf of a person' are only regulated when the action is sufficiently linked to the outcome of the designated service, and actions will only be sufficiently linked when the following principles are met:
  - **who**: a person whose assistance to a customer directly advances a designated service; merely influencing how the customer proceeds, providing general advice or ancillary services, isn't sufficient.
  - **when**: a person starts to provide one of the designated services when they act on instructions in relation to a relevant transaction or the creation or restructure of a body corporate or a legal arrangement.

Designated services—Reconciling the legislation and AUSTRAC's Guidance

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- By confining 'assisting' to 'directly advancing' a transaction and distinguishing activities which merely 'influence' an outcome, the Items are construed as requiring a direct relationship between a service and an outcome (transaction) to be engaged.
- In due course the legislation should be amended for clarity, but in the interim—is there a basis for AUSTRAC's more confined interpretation?
- Having regard to the text, context, and purpose of the legislation—to implement the FATF Recommendations (predicated on the risk-based approach), we think the better view is "yes".
- Further, AUSTRAC is the enforcement body with extraordinarily wide powers. So, what AUSTRAC thinks carries great weight.

Designated services—What does it all mean?

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- It's complicated!
- While some legal services are clearly covered, and some are not, the starting point will be for individual practitioners to assess the legal services they provide and determine whether those services may be 'designated services' in the circumstances in which they are provided
- The Reforms Guidance assists by providing generic examples some of which are applicable to financial planners and accountants, and which need to be tailored for application to lawyers, that shed light on which legal services, depending on the facts, are likely or unlikely to be designated services
- We will need more sector-specific guidance

Some examples of what's unlikely to be a designated service

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- **Legal aid services:** Generally, legal aid services are unlikely to fall within the scope of designated services. Query CLCs.
- **ADR:** Alternative dispute resolution service providers, including the provision of services to facilitate dialogue with a view to resolving a dispute either by mutual agreement (in the case of negotiation and mediation), or by binding decision (in the case of arbitration) are unlikely to be a designated service
- **Template legal documents**: The provision of template legal documents by a legal services provider to another (for example, an accountant) on a subscription basis, where the template is used by another in the course of their own separate business, including by tailoring them, with no additional input

Some examples of what's unlikely to be a designated service

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- Acting as:
  - a director in a personal capacity and not as a nominee of another
  - an executor under a will pursuant to a grant of probate
  - a Trustee for Sale appointed by Court
- Preparing a power of attorney for a natural person

Designated services—Advisory Services

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- Purely advisory services that do not '**directly advance**' a transaction (etc) will not constitute a designated service; rather, will merely '**influence**' an outcome.
- Advisory services that are ancillary to another service that does directly advance an outcome are not themselves covered
    - Ancillary advice example: a lawyer conducting a transaction in progress seeks external advice from an ancillary adviser (for example, a tax lawyer or an intellectual property lawyer) on a specific aspect of the matter, such as the terms of the agreement. While the lawyer is providing a designated service, the ancillary adviser is not (applying the principles in the Reforms Guidance)
- But—a question of degree, factually dependent

Designated services—Wills and estates

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What's not a designated service

- Drafting a will, including a testamentary trust
- Obtaining grants of probate, letters of administration, and ancillary work obtaining them and administrating deceased estates is unlikely to be a designated service where it involves a court order
- An in specie distribution of real estate made pursuant to a will covered by the court or tribunal order exception
- Transfers by survivorship (which happen by operation of law)
- Holding of estate monies in a lawyer's trust account pending distribution to beneficiaries unlikely to be a designated service *provided that* there is nothing else in the administration of the estate that would constitute a designated service (seeking confirmation from AUSTRAC)

Designated services—Wills and estates

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What is covered

- Transfers inter vivos and creation of trusts for estate planning constitute designated services

Complexity

- Where a testator is the trustee of a family trust and the will specifies what is to happen in those arrangements when testator dies

Designated services—Family law

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Divorce proceedings example (Reforms Guidance)

- Lawyer providing advice to husband in relation to the family home—not a designated service, as no real estate transaction being directly advanced
- After mediation, lawyer drafts a consent order to settle the proceedings including providing for transfer of property—not a designated service
- Court makes order, and property is transferred pursuant to this order—not a designated service because of the court order exemption

Binding financial agreement example (Reforms Guidance)

- Family lawyer provides work in drafting and executing a binding financial agreement in relation to transfer of property—not a designated service because not performed in connection to a transaction
- However, the conveyancer/lawyer's services to directly advance the transfer of the property pursuant to the agreement is a designated service

Designated services—Family law

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Other Complexities

- If a pre- or post-separation agreement establishes a trust, then it will be a designated service

Further LCA guidance will be prepared

Designated services—Commercial lawyers

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Commercial lawyers may provide designated services under Items:

- 1 (real estate)
- 2 (transferring body corporates or arrangements)
- 3 (holding money)
- 4 (debt financing)
- 5 (transferring shell companies)
- 6 (restructuring)
- 7 (nominating to certain positions)
- Also, potentially—though less likely—Items 8 and 9.

Designated services—Commercial lawyers

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Issues

- **Item 2, transferring shareholdings**: Reforms Guidance refers to transferring the ‘controlling interest’, though the legislation only refers to ‘transfer a body corporate’ (Discussion underway with AUSTRAC)
- **Commencement:** Key issue is when a service commences
- Not much guidance regarding specialist advice being sought when a transaction is in progress and being directly advanced by another lawyer—will likely come down to a question of degree and the extent of the specialist advice being provided

Designated services—Tax advice and planning

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Example: Sale of body corporate (Reforms Guidance)

- Accountant provides tax advice to a client on the implications of selling a body corporate. Though this may be potentially influential to the client deciding whether to sell the body corporate, it doesn't directly advance any related transaction and there isn't a transaction at this point—so no designated service is being provided.
- Once it is clear there is one buyer, and a lawyer is instructed to act for the client to sell the body corporate to a buyer, the lawyer commenced to provide a designated service begins from this point.
- If there are many potential buyers that have been identified, the designated service begins when negotiations begin with one or more potential buyers.

Designated services—Tax advice and planning

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Example: Sale of body corporate (cont)

- Once a designated service commences, preparatory steps taken to assist in the sale of the body corporate will be regulated, including:
  - representing the customer in negotiations for the sale
  - preparing or reviewing contracts for sale
  - conducting due diligence, valuation of assets and liabilities in anticipation for the sale
  - obtaining Foreign Investment Review Board approvals, and Australian Securities Exchange and ASIC waivers for clients
  - preparing for financial settlement
  - preparing documents to be provided to an authority (such as ASIC) for the transfer of the body corporate.
- These steps are regulated because they go directly to advancing the outcome of the designated service in item 2
- Query—ancillary advice being provided to lawyer directly advancing transaction

Designated services—Conveyancing Lawyers

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Conveyancing transactions are at the heart of the designated services

Relevant activities include typical steps taken in the conveyancing process to transfer real property from one person to another, such as:

- preparing, reviewing, lodging sale contracts & land transfer instruments
- researching property titles, strata documents, or land use specifications
- coordinating with financial institutions regarding payments and discharge of mortgage for the real estate transfer
- holding funds on behalf of a buyer and disbursing trust funds at settlement, or organising for release of deposit to the seller
- preparing for financial settlement
- preparing documents to be provided to a registry authority for transfer of real estate on behalf of a client

Whether an activity will be regulated depends on when '**directly advancing**' threshold is met

Designated services—Conveyancing Lawyers

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Real estate transactions

- A person starts providing the designated service when they act on instructions in relation to a transaction to buy, sell or transfer property and a relevant transaction exists.
- A transaction will typically exist when there is at least one buyer and one seller (do not need to be specifically identified) and when either:
    - in a private treaty or where an auction doesn't meet reserve, when a buyer and seller, verbally or in writing, agree to the sale price of the property prior to the payment of any deposit or the exchange of any contracts
    - in an auction that meets reserve, at the point a buyer is successful at auction

Designated services—Conveyancing Lawyers

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Example: Conveyancing

- Lawyer provides a potential client with general advice on the process for buying real estate, then accepts instructions to act for the client and draws up a draft contract for sale. No designated service provided as there is no real estate transaction (at this point)
- The buyer is successful at an auction; at this point, the lawyer will start to provide a designated service
- Before settlement, buyer expresses regret and seeks further advice from:
    - an accountant for financial advice on the implications of withdrawing
    - another lawyer for advice on the legal consequences of withdrawing
- These further services may influence whether or not the transaction will proceed, but do not directly advance this transaction and are not regulated

Designated services—Trusts

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Example: Setting up a trust

- Establishing a trust for a client (other than a testamentary trust) is a designated service
- Providing a draft trust deed (e.g. SMSF) by subscription where other lawyers, accountants etc., are acting on the establishment of the trust is likely not a designated service
- A transfer, creation of a trust, etc, that arises by operation of law is not a transaction so unlikely to be a designated service

Designated services—Trusts

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Example: Operating Trust Accounts

- Holding, controlling or managing a persons' money or property that passes through accounts or dealing with money or property on direction or instruction from a client in a transaction may constitute providing a designated service.
- This includes:
  - Managing sale or purchase funds held on escrow
  - Managing money or property prior to it being settled as trust property

Designated services—Trusts

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Carve outs for trust accounts

- Per section 6(5C) and (5D), Item 3 does not apply in relation to …
  - Money on account for payment of fees and disbursements including counsel fees
  - Money received or payable under an order of a court or tribunal (e.g. judgment sums, bail payments)
  - Money received from a government body
  - Money received from an insurer
  - Money paid to the ATO

Unresolved queries

- Extent to which estate monies can be held in trust account pending distribution to beneficiaries
- Where a deposit is held in a solicitor's trust account when acting for the vendor, is the solicitor also providing a designated service to the purchaser?

Designated services—Personal injury law

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- Litigation services are unlikely to constitute a designated service
- The receipt of settlement monies for distribution to the client also unlikely to constitute a designated service where it falls within the carveouts in sections 6(5C) and 6(5D)
- However, it is unclear if settlement monies received into trust other than from an insurer or pursuant to court order will be covered (being considered by AUSTRAC)

Designated services—Insolvency Practitioners

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- Status still being considered by AUSTRAC

Regulation of barristers and litigation solicitors

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How the AML/CTF Regime will affect barristers and litigation solicitors, including:

- Exemptions for barristers
- Designated services as they apply to direct access barristers and litigation solicitors

The barrister exemption

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Section 6(6B)—Services provided by barristers on instructions of a solicitor

> *Despite anything in this section, a service is not a designated service if the service is provided by a person in the course of legal practice as a barrister on the instructions of a solicitor, if the instructions are given in connection with the provision of a designated service.*

Scope of the barrister exemption

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- Unlikely to apply to direct briefs from commercial entities, even where instructed by an in-house solicitor
- No exemption for pro bono (eg court referrals) unless a solicitor is also involved
- BUT—the AML/CTF Act applies only in relation to designated services, so if litigation work is not a designated service, the exemption is irrelevant to direct access work

Government work

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Exposure draft rule proposed to be included in the *Anti-Money Laundering and Counter-Terrorism Financing (Class Exemptions and Other Matters) Rules* (not yet in force, subject to consultation)

Rule 7.1—AML/CTF Act does not apply to services in certain circumstances

For the purposes of subsection 247(3) of the AML/CTF Act, that Act does not apply to a designated service if:

(a) the service is covered by an item of table 6 in section 6 of that Act; and

(b) the service is provided by a person in the course of legal practice as a barrister; and

(c) the service is provided to an Australian government body

What is a government body?

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- Section 5 definition: Australian government body means the Commonwealth, a State or Territory, or an agency or authority of the above
- Draft explanatory statement to the Exposure Draft Rules:
  - Cth: all Non-Corporate Commonwealth Entities, Corporate Commonwealth Entities, and Government Business Enterprises
  - State/Territory: government departments, agencies, offices, entities and local government councils/authorities (Legal Aid – statutory corporation)
  - BUT: Companies, trusts, partnerships or other associated entities created by **council or councillors** for the exercise of council functions or activities are not within the scope of the proposed Rule

Table 6 services and litigation

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- **Item 1:** Transaction to sell, buy or otherwise transfer real estate
- **Item 2:** Transaction to sell, buy or otherwise transfer a body corporate or legal arrangement.
- **Item 4:** Transaction for equity or debt financing relating to a body corporate or legal arrangement (including a proposed body corporate or legal arrangement)
- **Item 6:** Creation or restructuring of a body corporate or legal arrangement

What might engage Table 6?

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- Drafting, negotiation, and advice work in relation to the proposed terms of real estate transactions (Item 1) or transfers of interests in joint ventures, partnerships, companies and trusts (Item 2)
- This may extend to settlement agreements and family law agreements not recorded in court orders (Items 1 and 2)
- Drafting, negotiation and advice work in relation to the creation of interests in joint ventures, partnerships, companies and trusts (Item 6)
- Drafting, negotiation, advice work and litigation work in relation to schemes of arrangement, corporate reconstructions and insurance portfolio transfers (Items 4 and 6)

Criminal practice

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- Lawyers acting in bail proceedings may be called on to advise about conditions involving sale or transfer of assets
- Criminal confiscation and forfeiture proceedings may involve transfers of property (albeit with approval of the relevant proceeds authority)
- Representing litigants in ADVO proceedings may involve consideration of property arrangements between the parties and prospective dealings affected by ADVOs

Dispute resolution and legal aid

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- Legal dispute resolution services are generally not caught as (a) they do not directly advance a transaction and (b) they generally only relate to matters that have already occurred
- Drafting a consent order to settle ongoing litigation, including an order providing for the transfer of real estate, is not caught as it does not directly advance a transaction but only influences a possible conveyancing process (which would directly advance a transaction)
- AUSTRAC considers that the court order exception in items 1 and 2 only applies to services carried out after the court order is made
- Legal Aid: AUSTRAC CEO has confirmed to Chair of National Legal Aid that work done by legal practitioners at legal aid commissions, or law firms undertaking work under a grant of legal aid, do not trigger AML/CTF obligations

Your obligations

Australian Government
AUSTRAC

- **Enrolment**: Enrol with AUSTRAC by 29 July 2026 latest, available from 31 March 2026
- **AML/CTF Program**: Develop, maintain and comply with an AML/CTF program, comprising AML/CTF policies and risk assessment
- **Initial and ongoing client due diligence**
  - Pre-existing customers
- **Reporting obligations:** suspicious matter reporting, threshold transaction reports
- **Appointing AML/CTF staff and training**
- **Record keeping**: Make and retain records for 7 years

AUSTRAC supports and regulatory approach

Australian Government
AUSTRAC

- **AUSTRAC guidance materials and support documents**
  - Sector specific program kits
  - Reforms Guidance
  - Webinars, e-learning modules, factsheets
- **AUSTRAC regulatory expectations and priorities for 2025/2026**

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The *Privacy Act 1988* (Cth) and Australia's reformed AML/CTF regime

Bobbie Wan
Head of Regulatory Policy and Strategy
The Law Society of NSW

AML/CTF reporting entities will have privacy responsibilities too

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- Most small businesses (businesses with an annual turnover of $3 million or less) are not covered by the *Privacy Act 1988* (Cth) (**Privacy Act**)
- However, regardless of turnover, the Privacy Act covers any business that is a reporting entity for the purposes of the AML/CTF Act
- This means that on 31 March 2026, when practices that provide a designated service become an AUSTRAC reporting entity, they will also become an 'APP entity' under the Privacy Act

AML/CTF and Privacy legislation have different objectives

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Some key objects of the Privacy Act are to:

- Promote the protection of the privacy of individuals
- Recognise that the protection of privacy for individuals is balanced with the interests of entities carrying out their functions or activities; and
- promote responsible and transparent handling of personal information by entities (Privacy Act, ss 2A(a) and (d))

In contrast, two principal objects of the AML/CTF Act are to provide:

- for measures to detect, deter and disrupt money laundering, the financing of terrorism, and other serious financial crimes, and
- relevant Australian government bodies and their international counterparts with the information they need to investigate and prosecute money laundering offences, offences constituted by the financing of terrorism, and other serious crimes (AML/CTF Act, ss 3(1)(aa) and (ab))

Three key points to assist with preparing to comply with the Privacy Act

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1. The Privacy Act does not stop you from adhering to your AML obligations, but you will need to navigate your obligations carefully

- Consider whether the collection and retention of personal information is 'reasonably necessary'

2. Have a privacy policy and collection notice

- The object of having a privacy policy is to help ensure your practice is managing personal information in an open and transparent way, so it is recommended that your privacy policy be written plainly and made available upon request
- Consider the OAIC's guide to developing an APP privacy policy (available on their website)

Three key points to assist with preparing to comply with the Privacy Act

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3. Take reasonable steps to keep your information secure

- Consider the OAIC's guide to assist entities to prepare a data breach response plan (available on their website)
- The NSW Law Society and Lawcover have created freely available resources to assist practitioners, available online here: https://www.lawsociety.com.au/legal-technology/cyber-security-resources



CYBER RISK MANAGEMENT CHECKLIST

☑ Payment processes and email fraud

- ☐ Before acting on directions for payment that are provided by email, your law practice verifies the payment details by phone (not using the phone number included in the same email as the directions for payment).
- ☐ You inform your clients in writing that you will never send them an email changing your trust or office account details.
- ☐ You advise your clients in writing to contact you urgently if they receive an email from the practice purporting to change payment details.
- ☐ You regularly check your email set up to ensure that there are no unexpected redirection rules in place (in Outlook, you can check this on the Home screen under Rules, then Manage Rules & Alerts).

☑ Software and virus protection

- ☐ You have a process in place to ensure that new software patches are applied to your IT system and software.
- ☐ You have antivirus protection in place and it is kept up to date.

☑ Data storage and back-ups

- ☐ You complete daily data back-ups.
- ☐ You check at least monthly, that your back-ups are readily accessible and able to be used/not corrupted upon retrieval.
- ☐ Where data is backed up in the cloud, you know what authentication procedures are required by the cloud provider to ensure that unauthorised users are not able to access your law practice data.

☑ Staff risk-awareness and training

- ☐ You have incorporated cyber risk awareness in your staff policies and training.
- ☐ Your firm has a "BYO device" security policy for staff who are able to access work files on non-company devices such as smart phones, tablets or home computers.
- ☐ You have advised all staff in writing of the importance of using passwords that are unique to the workplace only.
- ☐ You and your staff automatically/regularly change your passwords every few weeks.
- ☐ You have discussed with staff the risks associated with clicking on attachments or hyperlinks in emails that look unusual or suspicious, and which could contain viruses, ransomware or other malware.
- ☐ You have discussed with staff the risks associated with using free or unsecured WiFi, importing material onto the practice's computer network through a USB drive, and taking confidential material outside the workplace via USB, mobile phone or laptop.
- ☐ Cyber risk awareness is included in your induction material for new staff.

☑ Data security breaches and privacy protection

- ☐ You have considered whether the Mandatory Breach Reporting regime under the Privacy Act 1988 (Cth) applies to your firm.
- ☐ Your policies and procedures note the importance of reporting relevant data breaches.

☑ Planning ahead

- ☐ You have an emergency response plan for what to do in the event of a cyber-attack.
- ☐ The plan includes seeking crisis assistance from your practice's IT consultant with their contact details recorded for immediate response.
- ☐ In the instance of a cyber breach, call the Lawcover cyber response team to access your cyber risk insurance cover on 1800 BREACH.

A joint initiative of THE LAW SOCIETY OF NEW SOUTH WALES Lawcover



DATA AND CYBER SECURITY FOR LAW PRACTICES

Document last updated on 10 November 2025

Knowing how to safely handle and store data is more important than ever in our rapidly growing information economy. This is all the more true for law practices who hold large amounts of personal information about clients and others, such as in the form of passports, driver's licences and bank account details, which may be accessible electronically.

Solicitors have a duty to their clients to maintain the confidentiality of client information. But what does this mean for law practices providing legal services in a context of continually changing and emerging technologies? The Law Society and Lawcover provide the following outline of solicitors' obligations with respect to collecting and handling personal information and mitigating cyber risk.

HOW DO I SAFEGUARD THE DATA MY LAW PRACTICE COLLECTS AND HOLDS?

Having good data management systems and processes can protect you and your clients' personal information from unauthorised access, disclosure and loss.

The Law Society and Lawcover have developed resources to assist law practices in this regard: https://www.lawsociety.com.au/professional-development/cyber-security-resources.

Solicitors can also refer to Lawcover's extensive library of resources on their website: https://www.lawcover.com.au/cyber-resources/.

WHAT SHOULD I DO IF I FALL VICTIM TO A CYBERCRIME EVENT?

Good data security management includes having a clear policy and procedure for reporting data breaches. If your law practice is targeted by cybercrime, you should:

1. Call 1800 BREACH (1800 273 224) or email lawcyber@cbp.com.au.
2. If the cybercrime relates to trust money, report the incident to the Law Society's Trust Accounts Department by emailing tad@lawsociety.com.au, who can then guide you further about the appropriate steps to take to mitigate risk.
3. Where applicable, comply with your obligations to notify an 'eligible data breach' under the *Privacy Act 1988* (Cth) (**the Privacy Act**). This is discussed further below.
4. Report the incident to www.cyber.gov.au/report and 'iDcare'.

WHAT OBLIGATIONS DO LAW PRACTICES HAVE IN COLLECTING AND HOLDING 'PERSONAL INFORMATION'?

OBLIGATIONS UNDER LEGAL PROFESSION LEGISLATION

All legal practitioners in NSW have a duty not to disclose any information that is confidential to a client unless otherwise permitted by the Legal Profession Uniform Law Australian Solicitors' Conduct Rules (**the Conduct Rules**) [rule 9 of the Conduct Rules].

Lawcover

THE LAW SOCIETY OF NEW SOUTH WALES

SMRs and notice obligations

Law Council
OF AUSTRALIA

- Section 41, Reports of suspicious matters—essentially provides that if an SMR obligation arises, you must make a report to AUSTRAC
- SMR obligation arises where a reporting entity suspects on reasonable grounds that … (not exhaustive list)
    - Client/their agent is not who they say they are
    - they have information concerning the provision, or prospective provision, of a designated service that may be relevant to the investigation of tax evasion, any offence, or the enforcement of the Proceeds of Crime Act
    - The provision of the service is preparatory to the commission of financing of terrorism, money laundering, etc
- Section 49 and 49B Notices: Requires reporting entities to respond to notices issued to them to obtain information or documents in certain circumstances

Tipping off

Law Council
OF AUSTRALIA

- Section 123 makes it an offence to disclose information regarding an SMR, section 49 Notice, or Section 49B Notice, where the disclosure would or could be reasonably expected to prejudice an investigation
- Penalty = Imprisonment for 2 years or 120 penalty units
- There are some exceptions:
  - You can disclose to a lawyer for the purposes of obtaining legal advice about making an SMR (etc)
  - You can make a disclosure in good faith, for the purpose of dissuading a client from engaging in conduct that constitutes, or could constitute, an offence (but this exception is strictly limited)

Navigating SMRs

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- Unique problems arise for lawyers in making an SMR
- SMRs, Notices, cannot be disclosed to client due to the tipping off provisions
- Ethical duties and professional responsibilities incompatible with continuing to act for the client
- Privilege will need to be claimed without instructions, and potentially defending challenges to assertions of privilege made by AUSTRAC (who is to pay)

Client legal privilege

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Section 242 Legal professional privilege

(1) Nothing in this Act affects the right of a person to refuse to give information (including by answering a question) or produce a document:

(a) the information would be privileged from being given on the ground of legal professional privilege; or

(b) the document would be privileged from being produced on the ground of legal professional privilege.

(2) The fact that a person has provided a description of information or documents that may be or are privileged from being given or produced on the ground of legal professional privilege does not, of itself, amount to a waiver of the privilege.

Client legal privilege

NEW SOUTH WALES BAR ASSOCIATION

- There is no obligation to make SMR if all of the information that forms the basis of the reasonable suspicion is privileged (s 41(2A))
- If only some of the information the subject of a SMR is privileged, or a NTP is issued, must report/produce but submit an LPP form setting out the basis of the privilege claim: (ss 41(3), 43(3)(aa), 49(4), 49B(4), 167(5))
- Claims to be determined by a process to be set out in guidelines published by the Minister for Home Affairs: s 242(a)

Client legal privilege—Issues

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- How can you make a privilege claim on behalf of a client without instructions?
- How to resolve infringement of client's common law right?
- Who is going to pay lawyers to make claims?
- Is informal dispute resolution realistic?
- Review of LPP in Commonwealth investigations
- Submissions to review: must it go to Court?

Conduct Rule Changes

Law Council
OF AUSTRALIA

- LCA is in the process of developing rule changes to the Australian Solicitors Conduct Rules (**ASCR**) to enable solicitors to cease to act after lodging an SMR with AUSTRAC and to clarify what can be said to the client so that the tipping off provisions are not enlivened
- Uniform Law States: Process for changing rules involves extensive consultation with local regulatory authorities and a variety of other stakeholders. Consultation will commence shortly and if successful, will result in a proposal to the Standing Committee of Attorneys General for the Uniform Law States by the Legal Services Council
- Non-Uniform Law jurisdictions: Similar but separate mechanisms for rule changes exist. Law Council consultation will commence shortly

Questions