



## SUMMARY

Money laundering refers to the processes through which criminals disguise the proceeds of their illicit activities to legitimise their assets. Financers of terrorism may adopt similar methods to avoid suspicion or detection by authorities.

In 2015, the Financial Action Task Force (FATF) – which sets the standard for the effective implementation of legal, regulatory and operational measures to combat money laundering and terrorism financing – published Australia’s most recent Mutual Evaluation Report, a nation-specific review that assesses compliance with the FATF recommendations. Although the existing anti-money laundering and counter-terrorism financing (AML/CTF) framework demonstrates a sufficient understanding of money laundering risks generally, the report revealed that Australia’s real estate sector does not currently have obligations under the *Anti-Money Laundering and Counter-Terrorism Financing Act 2006* (Cth) (AML/CTF Act) and the *Anti-Money Laundering and Counter-Terrorism Financing Rules Instrument 2007* (Cth) (AML/CTF Rules). Moreover, Australia lacks a specific framework to help designated non-financial businesses and professions to understand the risks of money laundering and terrorism financing. Accordingly, FATF rated Australia as non-compliant with two of its recommendations, Recommendations 22 and 23.

The FATF recommendations require financial institutions to conduct customer due diligence, maintain records pertaining to their transactions, and detect and report any suspicious transactions. Recommendations 22 and 23 extend those same obligations to the non-financial sector, including real estate professionals. Australia’s rating of non-compliance was reinforced in FATF’s 3rd Enhanced Follow-up Report in 2018. The rating could result in Australia being grey listed, meaning that it would be known globally as a safe haven for money laundering and terrorism financing activities. This could lead to difficulties for Australia’s economy and trading relationships.

In March 2022, the Senate Legal and Constitutional Affairs References Committee responded to the FATF Follow-up Report by releasing an issues paper that evaluated Australia’s AML/CTF framework and discussed the potential application of the AML/CTF Act and Rules to real estate professionals when conducting specific transactions (Tranche II). The implementation of Tranche II would impose enhanced obligations on the real estate industry to maintain records and report on transactions that indicate money laundering activity, as required under Recommendations 22 and 23.

The following toolkit has been designed for real estate agents to assist you in understanding your reporting obligations under the AML/CTF Act and Rules.

Failure to comply with those obligations may result in civil or criminal penalties, including civil penalty orders of up to 20,000 penalty units (A\$2,200,000), enforceable undertakings, infringement notices and remedial directions.

To ensure that Australia has an informed viewpoint on the workability, impact and effectiveness of Tranche II, learnings from its international counterparts can be used as a form of advice and feedback. The United Kingdom, Canada and New Zealand are bolstered by strong AML/CTF laws that are largely influenced and governed by the global AML/CTF framework set forth by FATF. Those jurisdictions have already implemented the domestic AML/CTF regime with regard to real estate agents. Their experiences are incorporated in the shaded text boxes throughout the toolkit.

The toolkit has been prepared specifically for businesses that provide professional real estate services. It is not intended for those that provide other designated services. If your designated business is not in the real estate industry, it is recommended that you seek independent advice.

The information provided in this document is for educational purposes only and cannot be relied upon as evidence of compliance with the AML/CTF Act. Moreover, this document cannot be relied upon as legal advice. If, after reading this document, you do not fully understand your compliance obligations, it is recommended that you seek appropriate legal advice.

## AML/CTF COMPLIANCE CHECKLIST FOR REAL ESTATE AGENTS

What do I need to do?	Why do I need to do it?	How do I do it?	Have I done it?
<b>ESTABLISHING Compliance</b>			
Allocate a compliance officer	AML/CTF Rules: Part 8.5	See page 4	<input type="checkbox"/> YES <input type="checkbox"/> NO
Create a risk assessment process	AML/CTF Rules: Rules 8.1.4, 8.1.5	See page 4	<input type="checkbox"/> YES <input type="checkbox"/> NO
Develop a risk awareness program	AML/CTF Rules: Part 8.2	See page 5	<input type="checkbox"/> YES <input type="checkbox"/> NO
Register with AUSTRAC	AML/CTF ACT: ss 51B, 51F, 76P	See page 5	<input type="checkbox"/> YES <input type="checkbox"/> NO
<b>MANAGING Compliance</b>			
Develop an employee due diligence program	AML/CTF Rules: Part 8.3	See page 5	<input type="checkbox"/> YES <input type="checkbox"/> NO
Collect and verify KYC information	AML/CTF ACT: ss 32, 35	See page 6	<input type="checkbox"/> YES <input type="checkbox"/> NO
Perform ongoing customer due diligence and transaction monitoring	AML/CTF Rules: Parts 15.2–15.11	See page 7	<input type="checkbox"/> YES <input type="checkbox"/> NO
Keep records	AML/CTF Rules: Chapter 20	See page 9	<input type="checkbox"/> YES <input type="checkbox"/> NO
<b>REPORTING Compliance</b>			
Report to AUSTRAC	AML/CTF Rules: Part 8.9	See page 9	<input type="checkbox"/> YES <input type="checkbox"/> NO
Conduct an independent review	AML/CTF Rules: Part 8.6	See page 12	<input type="checkbox"/> YES <input type="checkbox"/> NO
Respond to AUSTRAC	AML/CTF Rules: Part 8.7	See page 12	<input type="checkbox"/> YES <input type="checkbox"/> NO

# AML/CTF COMPLIANCE TOOLKIT

## ALLOCATE A COMPLIANCE OFFICER

In accordance with Part 8.5 of the AML/CTF Rules, real estate agents must appoint someone at management level to be a compliance officer.<sup>1</sup>

To ensure that there is always someone who is designated as compliance officer, it is helpful to assign the role to a specific position rather than an individual. This will ensure that you are always compliant with the AML/CTF Rules, including when staff members are promoted or leave the business.

The duties that a compliance officer may perform to ensure that your business meets its AML/CTF obligations include monitoring compliance with the AML/CTF Act and AML/CTF Rules; taking day-to-day

responsibility for your AML/CTF program; helping to create, implement and maintain internal policies, procedures and systems for AML/CTF compliance; and being the contact point for your business's dealings with the Australian Transaction Reports and Analysis Centre (AUSTRAC) – for example, submitting suspicious matter reports and threshold transaction reports, and liaising about compliance audits and other AUSTRAC requests.

To understand more about the role of the compliance officer, see [AUSTRAC | AML/CTF compliance officers](#).

*In Canada, it was suggested that the appointment of a compliance officer should be to a role that has communication with business decision-makers, has authority and access to the risk awareness program to make updates and alterations, understands the business's structure, is capable of understanding the business's requirements under the AML/CTF Act and Rules, and can recognise the agency's money laundering and terrorism financing risks.*

## CREATE A RISK ASSESSMENT PROCESS

Rules 8.1.4 and 8.1.5 of the AML/CTF Rules require you to have a process for assessing money laundering and terrorism financing risks related to your real estate agency.<sup>2</sup>

The risk assessment must be reviewed and updated regularly to ensure that your agency is not at risk of money laundering or terrorism financing.

The four-step risk assessment process to help you manage money laundering, terrorism financing and regulatory risks is as follows:

- Identify risks
- Assess and measure risks
- Apply controls
- Monitor and review effectiveness.

Your risk assessment should be written and it should be informed by [AUSTRAC | Implement a risk management process](#).<sup>3</sup>

*In New Zealand, it is recognised that the implementation of a risk assessment process can be costly and time consuming.*

*To save money and time, you can integrate the required elements of the risk assessment into an existing risk assessment that your business already conducts. Currently, you are not required to create a new and separate risk assessment.*

<sup>1</sup> *Anti-Money Laundering and Counter-Terrorism Financing Rules Instrument 2007 (No. 1)* (Cth) pt 8.5.

<sup>2</sup> *Ibid* rr 8.1.4, 8.1.5.

<sup>3</sup> To understand AUSTRAC's expectations for risk assessments, see [AUSTRAC Insights: Assessing](#)

[ML/TF Risk](#). For more information on risk assessing money laundering and terrorism financing, see [AUSTRAC | Money laundering/terrorism financing risk assessment](#).

## DEVELOP A RISK AWARENESS PROGRAM

Under Part 8.2 of the AML/CTF Rules, you must create a risk awareness training program.<sup>4</sup> The purpose of this program is to train your employees about money laundering and terrorism financing risks in the real estate industry and about your procedures to comply with the AML/CTF Act and Rules.

For more information on what your program should include and who in your team requires training, see [AUSTRAC | Employee training: AML/CTF risk awareness training program](#).

*In New Zealand, there were overwhelming impacts where real estate agents were unaware of the procedures, policies or controls in place to detect and respond to money laundering and terrorism financing risks.*

*If you currently have an alternative risk awareness program, you should review it and adapt it to include education about money laundering and terrorism financing risks and procedures. If you do not have a current training program that regularly engages employees, you must develop a training program that encompasses the risks of money laundering and terrorism financing so that your employees and your business are not exploited for criminal activity.*

## REGISTER WITH AUSTRAC

As a provider of a designated service, you must enrol on the Reporting Entities Roll.<sup>5</sup> Furthermore, under sections 51F and 76P of the AML/CTF Act, you must notify AUSTRAC of any material changes to the enrolment and registration details of your business.<sup>6</sup>

The requirement to maintain your business enrolment and registration details with AUSTRAC is ongoing. You must notify AUSTRAC of any change in circumstances that may materially affect your registration within 14 days of the change occurring.

You should establish:

- Who in your business will be responsible for maintaining the details
- How this person will be notified of any changes to the details.

If you provide any designated services, you must enrol with AUSTRAC within 28 days of providing such services.

For more information on enrolling or registering with AUSTRAC, see [AUSTRAC | Enrol or register with AUSTRAC](#).

*In order to lower the costs associated with this requirement, it was recommended in Canada that the person responsible for maintaining enrolment and registration details be someone who is in constant communication with the entity's management and who has sufficient knowledge of the business structure.*

## DEVELOP AN EMPLOYEE DUE DILIGENCE PROGRAM

According to Part 8.3 of the AML/CTF Rules, you must have an employee due diligence program that explains how you will screen employees.<sup>7</sup> This is to help prevent your real estate agency's risk of exposure to money laundering and terrorism financing. Your risk assessment should inform how your employee due diligence program is developed.

It should include policies, procedures and controls for ensuring that all compliance obligations are adequately and effectively met.

For more information on AUSTRAC's expectations for employee due diligence programs, see [AUSTRAC | Employee due diligence](#).

<sup>4</sup> *Anti-Money Laundering and Counter-Terrorism Financing Rules Instrument 2007 (No. 1) (Cth) pt 8.2.*

<sup>5</sup> *Anti-Money Laundering and Counter-Terrorism Financing Act 2006 (Cth) s 51B.*

<sup>6</sup> *Ibid* ss 51F, 76P.

<sup>7</sup> *Anti-Money Laundering and Counter-Terrorism Financing Rules Instrument 2007 (No. 1) (Cth) pt 8.3.*

*In Canada, there were many gaps in the AML/CTF framework prior to the establishment of an employee due diligence program.*

*It is likely that your business already has a process for screening new employees. If it does, you should review and update the process to ensure that it considers AML/CTF risks. However, if you do not currently screen your employees, you should create a screening process to detect high-risk employees.*

## COLLECT AND VERIFY KYC INFORMATION

Under the AML/CTF Act, you must collect and verify know-your-customer (KYC) information before you provide a service to a customer.<sup>8</sup>

The procedures you use to collect and verify KYC information will form part of your AML/CTF program, which must include the following:

- The way in which you collect and verify KYC information
- How you collect and verify the information of your customers' beneficial owners
- How you determine whether a person is a politically exposed person (PEP)
- How you respond to any discrepancies (see below)
- The circumstances under which you will need to collect further information
- How you collect information of agents acting for a customer.

The process must be completed to ensure that a customer is who they claim to be and that you know the details of their beneficial owners.

The type of information that you must acquire and verify will depend on the type of customer and the associated level of risk you anticipate with such a customer. See **Appendix B** for a summary of the collection and verification of information by customer type. Any information that you collect in the process of customer verification must be kept for a period of at least seven years.

## POLITICALLY EXPOSED PERSONS (PEPS)

When collecting KYC information, you must also assess whether the customer is a PEP.<sup>9</sup>

In doing this, you must consider:

- How you will determine whether a customer is a PEP
- How you will determine if a PEP is high risk
- The steps you will undertake to mitigate that risk.

PEPs are individuals who hold important public positions or roles. They may be:

- Domestic – someone involved in an Australian government body
- Foreign – someone involved in a government body that is not Australian
- International organisation – someone involved in an international organisation, such as the United Nations.

## DISCREPANCIES

You must create a system of response for any discrepancies you may encounter when verifying a customer's information.<sup>10</sup> The purpose of this process is to ensure that you have an accurate understanding of who the customer is and that they exist.

Options to consider include:

- Will you request additional information?
- Will you implement your enhanced customer due diligence procedures?
- Will you require the compliance officer to make a decision on whether the business relationship should commence?

<sup>8</sup> *Anti-Money Laundering and Counter-Terrorism Financing Act 2006* (Cth) ss 32, 35.

<sup>9</sup> *Anti-Money Laundering and Counter-Terrorism Financing Rules Instrument 2007 (No. 1)* (Cth) r 4.13.1.

<sup>10</sup> See, eg, *ibid* r 4.2.9.

## RECORDING KYC INFORMATION

All customer identification information should be recorded. This is a legislative requirement and also a helpful tool when applying your enhanced customer

due diligence procedures, monitoring transactions, or reporting suspicious information.

For more information, see [AUSTRAC | Customer identification: Know your customer \(KYC\)](#).

*In both New Zealand and Canada, the assessment of customers is risk-based and depends on the size and structure of the individual real estate business. To ensure the efficient use of resources, it is important to establish an adequate risk assessment process that effectively determines high-risk and low-risk risk customers.*

*You may also be able to rely on third party verification measures or use simplified identification procedures.<sup>11</sup>*

## PERFORM ONGOING CUSTOMER DUE DILIGENCE AND TRANSACTION MONITORING

Ongoing customer due diligence occurs after a relationship with a customer has been established.

### UPDATE, VERIFY AND RE-VERIFY CUSTOMER INFORMATION

As part of your AML/CTF program, you must establish risks and controls to assist in the determination of whether a customer's information needs to be updated, verified or re-verified.<sup>12</sup>

Circumstances where you should update, verify or re-verify customer information include (but are not limited to) where:

- The customer's address, name, employment or circumstances have changed

- The customer's volume, source or destination of funds has changed
- You think that the customer may be engaging in suspicious activity.

In establishing these controls, you should consider:

- Who within your organisation will be responsible for updating, verifying and re-verifying customer information
- How you will ensure that this process is completed in a timely manner
- How you will collect and store this information.

*In the United Kingdom, it has been recognised that these ongoing customer due diligence requirements may be particularly onerous for small businesses. In order to minimise the associated ongoing costs, it is important to implement a risk-based approach that is tailored to your business. It may also be beneficial to adapt existing customer due diligence measures to meet this requirement.*

## MONITOR CUSTOMER TRANSACTIONS

As part of your ongoing customer due diligence obligations, you must implement and maintain a transaction monitoring program to identify, mitigate and manage the risks that you may reasonably face in the provision of your services.<sup>13</sup>

Your transaction monitoring program must identify transactions that appear to be suspicious. Those transactions must be reported to AUSTRAC and may include:

- Unusual patterns of transactions
- Complex transactions
- Multiple transactions.

<sup>11</sup> For third party verification, see [AUSTRAC | Reliance on customer identification procedures by a third party](#). For simplified procedures, see [AUSTRAC | Customer identification and verification: easy reference guide](#).

<sup>12</sup> *Anti-Money Laundering and Counter-Terrorism Financing Act 2006* (Cth) s 229; *Anti-Money*

*Laundering and Counter-Terrorism Financing Rules Instrument 2007 (No. 1)* (Cth) pts 15.2, 15.3.

<sup>13</sup> *Anti-Money Laundering and Counter-Terrorism Financing Act 2006* (Cth) s 36; *Anti-Money Laundering and Counter-Terrorism Financing Rules Instrument 2007 (No. 1)* (Cth) pts 15.4–15.7.

Ultimately, the sophistication of your transaction monitoring program will depend on the size of your business and the level of risk that you may face. However, at the very least, your program should:

- Outline the process to identify suspicious transactions

- Document appropriate controls that capture all necessary transaction information
- Document the process for further review of suspicious transactions.

*In New Zealand, it has been recommended that reporting entities implement a system that periodically reviews the transactions of existing clients and compares this with the predetermined level of associated risk to see if further investigation is required and to ensure the effectiveness of their transaction monitoring program.*

### **ENHANCED CUSTOMER DUE DILIGENCE (ECDD)**

As part of your AML/CTF program, you must implement an ECDD program that outlines the steps you will take when there is high risk of money laundering or terrorism financing.<sup>14</sup>

ECDD refers to the extra steps that must be taken in the identification and verification of high-risk customers. Your ECDD program should set out your procedures for suspicious activity reporting obligations, high money laundering and terrorism financing risks, or when your customer is a PEP.

You must implement this program in the following circumstances:

- When you determine the risk of money laundering or terrorism to be high
- When your customer is a foreign PEP
- When your customer's activity leads you to submit a suspicious matter report
- When a transaction involves a person or company that has a presence in a prescribed foreign country (currently, only Iran and North Korea are prescribed).

As part of your program, you must:

- Provide the parameters for high-risk customers
- Identify who is responsible for applying the program
- Establish controls to ensure the operational efficacy of the program.

It may also be useful for you to consider:

- How you will gain updated or further information from your customer
- How you will undertake a detailed analysis and/or verification of your customer's KYC information
- How you will monitor the customer's transactions
- Who in senior management will need to provide approval when you determine whether or not to continue a business relationship with the customer
- Whether you should provide services to the customer by processing a transaction.

For more information on ongoing customer due diligence, see [AUSTRAC | Ongoing customer due diligence](#).

*The New Zealand regulatory body has provided certain scenarios where ECDD may be necessary, including:*

- *Where the vendor is a resident of a high-risk country with insufficient AML/CTF practices*
- *Where the vendor is a PEP*
- *Where the customer is a trust.*

<sup>14</sup> *Anti-Money Laundering and Counter-Terrorism Financing Act 2006* (Cth) s 36; *Anti-Money*

*Laundering and Counter-Terrorism Financing Rules Instrument 2007 (No. 1)* (Cth) pts 15.8–15.11.



## KEEP RECORDS

Under the AML/CTF Act, you must keep certain records where you have provided designated services to customers.<sup>15</sup>

In particular, you must:

- Keep records of customer identification for seven years after the date that you last provided a service to that customer
- Keep records of transactions for seven years after they have been conducted

## REPORT TO AUSTRAC

As part of your AML/CTF program, you must send reports relating to suspicious matters, threshold transactions, and compliance with AML/CTF obligations to AUSTRAC.

### SUSPICIOUS MATTER REPORTS (SMRS)

In accordance with section 41 of the AML/CTF Act, you must report suspicious matters to AUSTRAC.<sup>16</sup>

If you detect a suspicious transaction or activity that may relate to any crime, you must submit an SMR to AUSTRAC. For example, you may suspect that an individual has committed, or is a victim of, a crime, or a customer may have provided false information regarding their identity.

SMRs must include the following information:

- Whether the individual is a customer of your business
- Whether they have asked you to provide a service that you normally provide
- Whether they enquired if you would be prepared to provide that service
- Whether you have commenced providing, or plan to provide, that service
- A description of the suspicious matter with reference to section 41(d)–(j) of the AML/CTF Act
- A description of the service to which the suspicious matter relates
- A description of the grounds for suspicion.

- Retain a copy of your AML/CTF program for seven years after it has ceased to have effect – this includes where an old program has been superseded.

It is important that you outline the relevant procedures of your business to ensure that these records are retained for at least seven years. Records must be stored securely and in a way that allows easy access and auditing. They can be in hard or soft copy and can be stored at your premises or offsite.

If you have submitted an SMR, or are required to do so, you must not disclose this information to any person other than an AUSTRAC-entrusted person.<sup>17</sup> In addition, you must not disclose information from which it may be determined that you have submitted an SMR. There are certain exceptions to this obligation, including:

- Providing legal or financial advice to a client
- Sharing information within a designated business group
- Engaging with law enforcement and regulatory agencies
- Disclosing to a court or tribunal for proceedings brought under the AML/CTF Act.

For more information on this obligation and its exceptions, see [AUSTRAC | Tipping off](#).

You must submit an SMR to AUSTRAC within:

- 24 hours if your suspicion is related to terrorism financing
- Three business days if your suspicion is related to anything other than terrorism financing (such as money laundering or tax evasion).

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<sup>15</sup> *Anti-Money Laundering and Counter-Terrorism Financing Act 2006* (Cth) s 114; *Anti-Money Laundering and Counter-Terrorism Financing Rules Instrument 2007 (No. 1)* (Cth) ch 20.

<sup>16</sup> *Anti-Money Laundering and Counter-Terrorism Financing Act 2006* (Cth) ss 41–42; *Anti-Money*

*Laundering and Counter-Terrorism Financing Rules Instrument 2007 (No. 1)* (Cth) ch 18.

<sup>17</sup> *Anti-Money Laundering and Counter-Terrorism Financing Act 2006* (Cth) s 123.

It is important for you to consider:

- What your employees are trained to do when they suspect suspicious activity
- Who holds the responsibility for submitting SMRs to AUSTRAC
- How you will ensure that SMRs are submitted within the required timeframe.

For more information on SMRs and how to submit them, see [AUSTRAC | Submitting your SMR](#).

*In New Zealand and Canada, the respective regulatory bodies have developed useful guides for potential red flags that may assist in the detection of suspicious matters. See **Appendix A** for a summary.*

### THRESHOLD TRANSACTION REPORTING (TTR)

Under section 43 of the AML/CTF Act, you must report to AUSTRAC if you have provided, or plan to provide, a service to a customer that involves a threshold transaction.<sup>18</sup>

Essentially, this means that you must submit a TTR to AUSTRAC if you provide a service that involves the transfer of A\$10,000 or more in physical currency. Each individual cash transaction is considered to be separate. This means that you are not required to submit a TTR for an aggregate of transactions made by a customer.

TTRs must include details of:

- The customer or individual who conducted the transaction
- The transaction itself
- The recipient of the funds

- The documentation used to verify the customer
- Your business.

The reports must be sent to AUSTRAC within 10 days of receiving the funds. They can be submitted by logging onto the AUSTRAC online portal and selecting the relevant TTR form. For a step-by-step guide, see [AUSTRAC | How to submit a threshold transaction report \(TTR\)](#).

In satisfying your TTR obligation, you should consider:

- What your employees are trained to do when they receive cash of A\$10,000 or more
- Who has the responsibility to submit TTRs to AUSTRAC
- How you will ensure that TTRs are submitted within the required timeframe.

*In Canada, it has been noted that structuring transactions to avoid this reporting requirement may be an indicator of money laundering. If you suspect that a customer is deliberately structuring transactions with the sole and dominant purpose of avoiding the TTR threshold, you must submit an SMR (see page 9).*

<sup>18</sup> *Anti-Money Laundering and Counter-Terrorism Financing Act 2006 (Cth) ss 43–44; Anti-Money*

*Laundering and Counter-Terrorism Financing Rules Instrument 2007 (No. 1) (Cth) ch 19.*

## INTERNATIONAL FUNDS TRANSFER INSTRUCTION (IFTI) REPORTS

Under the AML/CTF Act, you must send an IFTI report to AUSTRAC within 10 business days after you have sent or received an IFTI.<sup>19</sup>

An IFTI involves either:

- An instruction accepted in Australia for money or property to be made available, or
- An instruction accepted in another country for money or property to be made available in Australia.

For more information on submitting IFTI reports, see [AUSTRAC | Money transferred to and from overseas: International funds transfer instruction \(IFTI\) reports](#).

## CROSS-BORDER MOVEMENT (CBM) REPORTS

Under the AML/CTF Act, you must submit a CBM report to AUSTRAC where you have received money instruments from an individual or entity from another country in excess of A\$10,000.<sup>20</sup>

Money instruments include:

- Cash
- Bearer negotiable instruments, such as:
  - Bills of exchange

- Cheques
- Promissory notes
- Other negotiable instruments.

For more information on CBM reports, see [AUSTRAC | Cross-border movement \(CBM\) reports](#).

## COMPLIANCE REPORTING

In accordance with section 47 of the AML/CTF Act, you must lodge a report with AUSTRAC relating to your compliance with the Act, the regulations and the AML/CTF Rules within the reporting period.<sup>21</sup>

This annual compliance report must demonstrate that you are meeting your obligations. It must be lodged by 31 March for the prior 12-month period of 1 January to 31 December.

To satisfy this obligation, you should determine who at your business will be responsible for the completeness and accuracy of the reports and how you will ensure that a report is submitted by the required date. This is an important consideration, as only listed administrators of your business can submit the reports. The reports can be completed and submitted through AUSTRAC's online portal.

For a step-by-step guide to completing a compliance report, see [AUSTRAC | Compliance reports](#).

*In New Zealand, it has been recognised that the ongoing costs of reporting are substantial, especially for small businesses.*

*Consequently, in the heavily franchised industry that is the real estate sector, it is important that franchisors provide adequate education and resources to create a culture of compliance among their franchisees and alleviate some of the pressures experienced by small businesses.*

<sup>19</sup> *Anti-Money Laundering and Counter-Terrorism Financing Act 2006* (Cth) s 45.

<sup>20</sup> *Ibid* s 54.

<sup>21</sup> *Ibid* s 47; *Anti-Money Laundering and Counter-Terrorism Financing Rules Instrument 2007 (No. 1)* (Cth) ch 11.

## CONDUCT AN INDEPENDENT REVIEW

Part 8.6 of the AML/CTF Rules requires you to conduct regular independent reviews to determine whether your agency is complying with its risk assessment and legal obligations and where improvement is required.<sup>22</sup> The results from each review must be provided to your business's board, executive and/or senior management.

When organising an independent review, you should consider:

- Who will conduct the review?
- How will you ensure that the reviewer is independent?
- How will the review occur?
- How will matters arising from the review be addressed?

AUSTRAC sets out who can conduct an independent review, the methodology and scope of the review, the contents of the report, and how often the review should be completed. See [AUSTRAC | Independent reviews](#).

*In the United Kingdom, it has been recognised that despite having systems in place, real estate agents are failing to report suspicious activity. Therefore, to ensure that your business is compliant with the AML/CTF Act, you should seriously consider whom you choose to engage with as your reviewer.*

*If you cannot identify anyone in your business who can act as an impartial internal reviewer, you should engage with an external reviewer such as a lawyer, accountant or AML/CTF consultant.*

## RESPOND TO AUSTRAC

In developing and updating your AML/CTF program, Part 8.7 of the AML/CTF Rules states that you must take into account any applicable guidance material and feedback provided by AUSTRAC that relates to the identification, mitigation and management of money laundering and terrorism financing risk in the real estate industry.<sup>23</sup>

Feedback from AUSTRAC may be specific to your business or general across the real estate sector. In some instances, you will need to respond to AUSTRAC. Therefore, you must have appropriate procedures in place to manage this feedback.

These procedures should consider:

- Who is responsible for keeping up to date with, and responding to, AUSTRAC feedback?
- How is the feedback recorded?
- Does the feedback require a response to AUSTRAC and, if so, how do you ensure that this is done in a timely manner?
- Have the owner, the franchisor and relevant employees been notified?

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<sup>22</sup> *Anti-Money Laundering and Counter-Terrorism Financing Rules Instrument 2007 (No. 1) (Cth) pt 8.6.*

<sup>23</sup> *Ibid pt 8.7.*

## APPENDIX A: RED FLAGS FOR SUSPICIOUS ACTIVITY

### REAL ESTATE SECTOR

- Use of complex loans or finance
- Manipulation of a property's valuation or appraisal
- Use of monetary instruments
- Use of investment schemes
- Properties being bought and sold in quick succession
- Customers selling for less than the market value
- Unusual involvement of third parties
- Lack of transparency regarding a company's structure in the public domain
- Unnecessarily complex transactions

### CLIENTS/CUSTOMERS

- Significant and unexplained geographical distance between your premises and the location of the client
- Customer purchases properties at significantly higher or lower prices than the market
- Unusual or complex business structures
- Difficulties in identifying the beneficial owners
- Customer is reluctant to provide all CDD information
- Client's access to funds does not match their profile
- Client shows little interest in price
- Sudden activity from a previously dormant client
- Client alters a transaction after being asked for further information
- Client appears nervous or defensive, especially when questioned
- Client refuses to identify the source of funds
- Client wishes to purchase property in someone else's name
- Client purchases property without viewing it

### COUNTRY/GEOGRAPHIC

- Countries with poor AML/CTF measures
- Countries with a history of bribery, corruption or tax evasion
- Countries with organised crime
- Countries that are, or border, conflict zones
- Countries associated with drug production or people trafficking

## APPENDIX B: REQUISITE KYC INFORMATION BY CATEGORY

Type of customer	Information to collect	How to verify	Relevant AML/CTF Rules
<b>Individual</b>	<ul style="list-style-type: none"> <li>● Full name</li> <li>● Residential address</li> <li>● Date of birth</li> <li>● If sole trader:               <ul style="list-style-type: none"> <li>○ Full business name of their business</li> <li>○ Australian Business Number (ABN) (if applicable)</li> </ul> </li> </ul>	<ul style="list-style-type: none"> <li>● Documentation-based verification – driver licence, passport, proof-of-age card, etc</li> <li>● Electronic-based verification – Australian Government Document Verification Service, Australian electoral roll, credit bureau</li> </ul>	Rules 4.2.3, 4.2.4, 4.2.7
<b>Company</b>	<ul style="list-style-type: none"> <li>● Domestic company:               <ul style="list-style-type: none"> <li>○ Full legal name</li> <li>○ Address</li> <li>○ Australian Company Number (ACN)</li> <li>○ Whether they are proprietary or public</li> <li>○ The name of each director (if a proprietary company)</li> </ul> </li> <li>● Registered foreign company:               <ul style="list-style-type: none"> <li>○ Name of the entity as registered by ASIC</li> <li>○ Whether it is registered with the relevant foreign registration body and whether it is private or public</li> <li>○ Australian Registered Body Number (ARBN)</li> </ul> </li> <li>● Unregistered foreign company:               <ul style="list-style-type: none"> <li>○ Full name of the company</li> <li>○ Whether it is registered with the relevant foreign registration body and if so:</li> </ul> </li> </ul>	<ul style="list-style-type: none"> <li>● Obtain a certificate of registration of the company</li> <li>● Manually access the information from <a href="#">ASIC Connect</a></li> <li>● Use an electronic verification service</li> </ul>	Rules 4.3.5, 4.3.10

	<ul style="list-style-type: none"> <li>– Any identification number issued by that body</li> <li>– Whether it is private or public</li> </ul>		
<b>Partnership</b>	<ul style="list-style-type: none"> <li>● Name of the partnership</li> <li>● Full business name as registered with the relevant state or territory body</li> <li>● Name and residential address of each partner</li> <li>● Country in which the partnership was established</li> <li>● For one of the partners, the required individual information (see Individual section above)</li> </ul>	<ul style="list-style-type: none"> <li>● Partnership agreement</li> <li>● Certified copy of the minutes of a partnership meeting</li> <li>● Reliable and independent partnership documents (hard or soft copy)</li> </ul>	Rules 4.5.3, 4.5.7
<b>Trustee</b>	<ul style="list-style-type: none"> <li>● Name of the trust</li> <li>● Business name of the trust (if applicable)</li> <li>● Names and addresses of all trustees</li> <li>● Settlor of the trust, unless: <ul style="list-style-type: none"> <li>○ The material asset contribution was less than \$10,000 when the trust was constructed</li> <li>○ The settlor was deceased, or</li> <li>○ The trust is verified using the simplified trustee verification procedure</li> </ul> </li> <li>● Country where the trust was established</li> <li>● Names of the trust beneficiaries</li> <li>● For one of the trustees, the required individual information (see Individual section above)</li> </ul>	<ul style="list-style-type: none"> <li>● Trust deed</li> <li>● Reliable and independent documentation relating to the trust (hard or soft copy)</li> </ul>	Rules 4.4.5, 4.4.15
<b>Association</b>	<ul style="list-style-type: none"> <li>● Name of the association</li> <li>● Names of the chair, secretary and treasurer</li> <li>● One of the following:</li> </ul>	<ul style="list-style-type: none"> <li>● Constitution or rules of the association</li> <li>● Minutes of an association meeting</li> </ul>	Rules 4.6.3, 4.6.7

	<ul style="list-style-type: none"> <li>○ Address of the association's office or principal place of administration</li> <li>○ Residential address of the public officer</li> <li>○ Residential address of the president, secretary or treasurer</li> <li>● Unique identification number issued to the association</li> <li>● Where the customer is acting in their capacity as a member of the association, the required individual information (see Individual section above) (only if unincorporated)</li> </ul>	<ul style="list-style-type: none"> <li>● Information provided by ASIC or the body responsible for the incorporation of the association (if applicable)</li> <li>● Reliable and independent documentation relating to the association (hard or soft copy)</li> </ul>	
<b>Registered co-operative</b>	<ul style="list-style-type: none"> <li>● Name of the co-operative</li> <li>● Names of the chair, secretary and treasurer</li> <li>● One of the following: <ul style="list-style-type: none"> <li>○ Address of the co-operative's office</li> <li>○ Principal place of operations (if applicable)</li> <li>○ Residential address of the president, secretary or treasurer</li> </ul> </li> <li>● Unique identification number issued to the co-operative</li> </ul>	<ul style="list-style-type: none"> <li>● Any maintained register</li> <li>● Minutes of a meeting</li> <li>● Any information provided by the body responsible for registration of the entity</li> <li>● Reliable and independent documentation relating to the co-operative (hard or soft copy)</li> </ul>	Rules 4.7.3, 4.7.7
<b>Government body</b>	<ul style="list-style-type: none"> <li>● Name of the government body</li> <li>● Address of its principal place of operations</li> <li>● Information outlining whether the body is: <ul style="list-style-type: none"> <li>○ A separate legal entity, agency or authority</li> <li>○ Established under domestic or foreign legislation</li> </ul> </li> </ul>	<ul style="list-style-type: none"> <li>● Reliable and independent documentation relating to the body (hard or soft copy)</li> </ul>	Rules 4.8.3, 4.8.5



<b>Agent</b>	<ul style="list-style-type: none"> <li>● Name of each agent acting on behalf of the customer</li> <li>● Evidence that the agent is authorised to act on the customer’s behalf</li> <li>● Where verifying officers have been appointed: <ul style="list-style-type: none"> <li>○ The title of the position or role that the agent holds</li> <li>○ A copy of the agent’s signature</li> <li>○ Evidence of the authorisation of the verifying officer</li> <li>○ The required individual information of the verifying officer (see Individual section above)</li> </ul> </li> </ul>	<ul style="list-style-type: none"> <li>● Reliable and independent documentation (hard or soft copy)</li> </ul>	Rules 4.11.2, 4.11.6
<b>Beneficial owner</b>	<ul style="list-style-type: none"> <li>● Name of each beneficial owner</li> <li>● One of the following: <ul style="list-style-type: none"> <li>○ Residential address of each beneficial owner, or</li> <li>○ Date of birth of each beneficial owner</li> </ul> </li> </ul>	<ul style="list-style-type: none"> <li>● Reliable and independent documentation (hard or soft copy)</li> </ul>	Rules 4.12.1, 4.12.4



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