

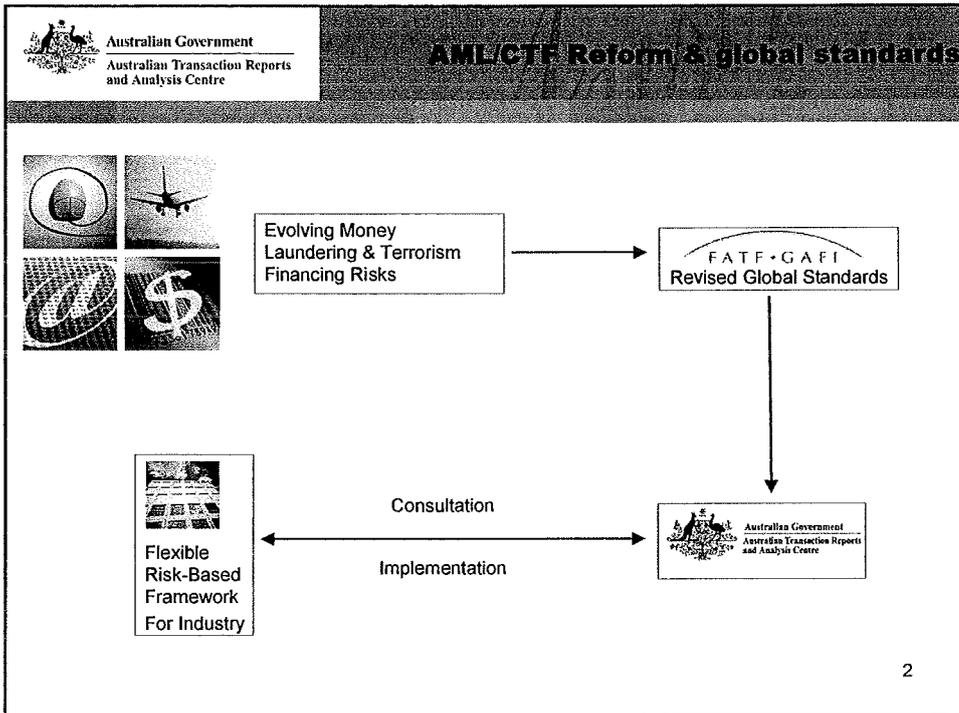
**Australian Government**  
**Australian Transaction Reports  
and Analysis Centre**

## **AUSTRAC and AML/CTF Reform**

*The 23rd Annual Banking & Financial Services Law &  
Practice Conference*

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Australian Government  
Australian Transaction Reports  
and Analysis Centre

## AML/CTF Reform & global standards

**According to the International Monetary Fund:**

- Possible consequences of money laundering on the economy include:
  - Risks to the soundness and stability of financial institutions and financial systems
  - Increased volatility of international capital flows
  - Crime can become more entrenched
  - A dampening effect on foreign direct investment if a country's commercial and financial sectors are perceived to be vulnerable to money launderers.

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**Financial Action Task Force:**

- “As for the potential negative macroeconomic consequences of unchecked money laundering, one can cite inexplicable changes in money demand, prudential risks to bank soundness, contamination effects on legal financial transactions, and increased volatility of international capital flows and exchange rates due to unanticipated cross-border asset transfers. Also, as it rewards corruption and crime, successful money laundering damages the integrity of the entire society and undermines democracy and the rule of the law.”



▪ **How**

- *Anti-Terrorism Act (No. 2) 2005*
- *Anti-Money Laundering and Counter-Terrorism Financing Bill 2006*
  - ⊛ Revised exposure draft Bill
  - ⊛ The “two tranche” approach to implementation
  - ⊛ Legislative framework

▪ **When**

- Three week public consultation period (from 13 July 2006)
- Implementation



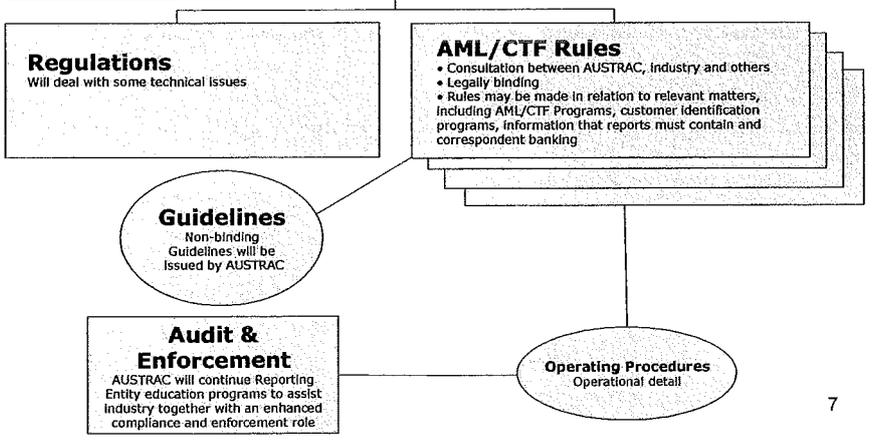
**Anti-Terrorism Act (No. 2) 2005 ("AT Act")**

- AT Act amendments to the FTR Act:
  - Providers of remittance services required to register with AUSTRAC
  - Customer information to be collected and stay with International Funds Transfer Instructions ("IFTIs")
  - Reporting of bearer negotiable instruments (BNIs) at the request of Customs and/or Police for cross border movements
  
- Purpose of the AT Act is to implement a number of the FATF Special Recommendations
  
- Commences 14 December 2006



**AML/CTF Bill—General principles, definitions (e.g. Reporting Entity and Designated Services) and high level obligations, for example:**

- A Reporting Entity must have and comply with an AML/CTF Program
- A Reporting Entity must carry out customer identification procedures
- A Reporting Entity must report suspicious matters





- Ministerial Advisory Group (MAG)
- Systems Working Group (SWG)
- AUSTRAC's Provider Advisory Group
- Minister's Roundtables 2005
- AML/CTF Advisory Group 2006: Working Groups
  - Customer verification
  - AML/CTF Programs, Reporting & Record Keeping
  - Risk principles
  - International Issues
- Focus Group
- Senate Legal and Constitutional Committee



**1<sup>st</sup> Tranche: (Exposure Bill)**

- Providers of "Designated Services" rather than "Cash Dealers"
- Approach moves from "industry based" to "activity based"
  - "Designated Services" includes a range of financial, bullion and gambling related services and services as prescribed in the regulations
  - Lawyers, accountants and other professions to the extent that they provide designated services

**2<sup>nd</sup> Tranche: (Proposed)**

- May extend to real estate agents, jewellers and professionals, such as accountants and lawyers, when they provide specified non-financial services.



- Identification procedures
  - Ongoing customer due diligence
  
- Reporting to AUSTRAC including
  - Threshold transactions
  - Suspicious matter reporting
  - International funds transfer instructions
  - AML/CTF compliance report
  - Cross border movements of physical currency & bearer negotiable instruments
  
- Funds transfer instructions—originator information
- Correspondent banking due diligence
  - Shell banks
- Register of designated remittance service providers
- AML/CTF Programs
- Record keeping



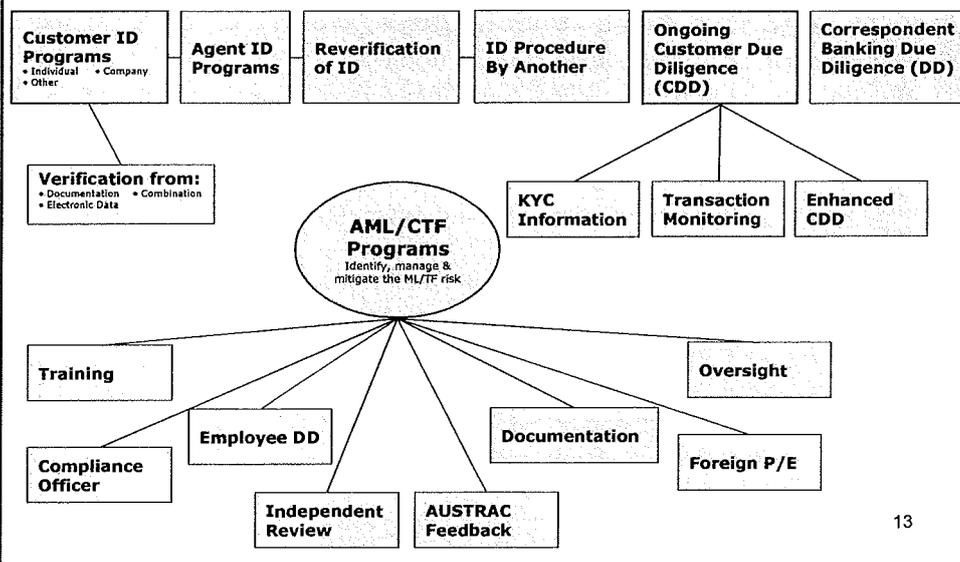
**Some key changes include:**

- Making the Draft Exposure Bill more risk based
  - Customer Identification Programs
  - AML/CTF Programs
  - Correspondent banking
  
- Amended coverage
  - Self-managed superannuation funds
  - Licensed financial advisers
  
- Joint AML/CTF Programs/ “Designated Business Group”



**Some key changes include:**

- Identification procedures
  - Re-verification—existing and low risk service customers
  - ID procedures on behalf of another—internal agents and employees
- Compliance reporting to AUSTRAC
  - Across the board
- External auditors
- Correspondent banking
- Remedial directions and enforceable undertakings
- Protection from liability / defences





**Reporting Entities**

- Risk based systems and controls
- Customer Identification Programs
- AML/CTF Programs
  - Oversight by Boards and Senior Management
  - Independent Review
- AML/CTF Compliance Officer
- Compliance reporting

**AUSTRAC—Working with industry**

- Education and public awareness campaigns
- Expanded compliance and enforcement role
- AML/CTF Rules and Guidelines
  - Ongoing industry consultation



**From the AML/CTF Rules—Second Exposure Draft:**

- “When determining and putting in place appropriate **risk** based systems and controls, the reporting entity must have regard to the nature, size and complexity of its business and the type of ML/TF **risk** that it might reasonably face.”
- “[I]n identifying its ML/TF **risk** a reporting entity must consider the **risk** posed by the following factors:
  - Its customer types, including any politically exposed persons
  - The types of designated services it provides
  - The methods by which it delivers designated services
  - The foreign jurisdictions with which it deals
  - The provision of designated services by any permanent establishments of the reporting entity in a foreign country.”



- **AML/CTF Program Purpose:** to identify, manage and mitigate ML/TF risk
  - “*ML/TF risk means the risk that a reporting entity may reasonably face that the provision by the reporting entity of designated services might (whether inadvertently or otherwise) involve or facilitate money laundering or financing of terrorism.*”
- **AML/CTF Rules set out details:**
  - AML/CTF risk awareness training for employees
  - Employee due diligence
  - Permanent establishments in a foreign country
  - Documentation
  - Independent review of AML/CTF Program
  - AUSTRAC Feedback
  - Board oversight and Compliance Officer
    - AML Culture



### **New Zealand: Comparative AML/CTF Reform**

- The Ministry of Justice is currently conducting a review of the *Financial Transactions Reporting Act 1996* to ensure that it is consistent with FATF Recommendations
- Possible amendments may impose enforceable obligations on reporting entities relating to customer due diligence, records keeping, suspicious transaction reporting, and internal anti-money laundering systems and procedures
- Ministry of Justice discussion documents seek feedback from the financial sector on these possible amendments
- The Ministry of Economic Development is currently conducting a Review of Financial Products and Providers



## **New Zealand: Comparative AML/CTF Reform**

### **Risk based approach:**

- “We agree that FATF standards permit jurisdictions to approach many of the FATF obligations on the basis of risk. Permitting risk-based compliance is an effective way for industry to best allocate its resources to achieve the objectives of FATF standards and thus minimise business compliance costs. We therefore favour a risk-based approach to implementing the FATF Recommendations.”

### **AML/CTF Guiding Principles**

- “In considering options for structuring the legislative framework, we have been guided by three principles: proportionality, partnership and effective compliance. Proportionality requires that the regulatory intervention is proportionate to the level of risk while being cost effective to industry. Partnership requires Government to work closely with industry in the development and implementation of the new legislative framework. Effective compliance requires that the legislative framework includes penalties and incentives.”

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## **New Zealand: Comparative AML/CTF Reform**

### **Consistency with Australian legislation**

- “We agree with submitters who suggested that our system harmonise to the greatest extent possible with the Australian model currently under development. This is consistent with wider government policy in the financial sector. Significant inconsistencies could reduce the opportunities for New Zealand companies to leverage off the internal procedures and policies developed by their Australian parent companies.”

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## **Wolfsberg Statement—Guidance on a Risk Based Approach for Managing Money Laundering Risks**

- “Money laundering risks may be measured using various categories, which may be modified by risk variables. The most commonly used risk criteria are:
  - Country risk;
  - Customer risk; and
  - Services risk
- in each case as modified by... risk variables...
- The weight given to these risk categories... in assessing the overall risk of potential money laundering is discretionary with each institution. There clearly is not one single methodology to apply to these risk categories, and the application of these risk categories is intended to provide a strategy for managing potential money laundering risks associated with potentially high risk customers.
- Each financial institution should document and periodically review its risk assessment approach.”

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## **Joint Money Laundering Steering Group (UK)**

- “A risk-based approach takes a number of discrete steps in assessing the most cost effective and proportionate way to manage and mitigate the money laundering and terrorist financing risks faced by the firm. These steps are to:
  - identify the money laundering and terrorist financing risks that are relevant to the firm
  - assess the risks presented by the firm’s particular
    - ⊗ customers
    - ⊗ products
    - ⊗ delivery channels
    - ⊗ geographical areas of operation.
  - design and implement controls to manage and mitigate these assessed risks
  - monitor and improve the effective operation of these controls and
  - record appropriately what has been done, and why.”

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### **Joint Money Laundering Steering Group (UK)**

- "Risk management generally is a continuous process, carried out on a dynamic basis. A money laundering/terrorist financing risk assessment is not a one-time exercise. Firms should therefore ensure that their risk management processes for managing money laundering and terrorist financing risks are kept under regular review."



### **Third Money Laundering Directive (EU)**

- "It should be recognised that the risk of money laundering and terrorist financing is not the same in every case. In line with a risk-based approach, the principle should be introduced into Community legislation that simplified customer due diligence is allowed in appropriate cases."
- "Equally, Community legislation should recognise that certain situations present a greater risk of money laundering or terrorist financing. Although the identity and business profile of all customers should be established, there are cases where particularly rigorous customer identification and verification procedures are required."



### **Third Money Laundering Directive (EU)**

- “The institutions and persons covered by this Directive shall apply each of the customer due diligence requirements... but may determine the extent of such measures on a risk-sensitive basis depending on the type of customer, business relationship, product or transaction.”
- “Member States shall require that institutions and persons covered by this Directive apply the customer due diligence procedures not only to all new customers but also at appropriate times to existing customers on a risk-sensitive basis.”



### **Codified Bank Secrecy Act Regulations (USA)**

- “The CIP [Customer Identification Program] must include risk-based procedures for verifying the identity of each customer to the extent reasonable and practicable.
- The procedures must enable the bank to form a reasonable belief that it knows the true identity of each customer.
- These procedures must be based on the bank’s assessment of the relevant risks, including those presented by
  - the various types of accounts maintained by the bank
  - the various methods of opening accounts provided by the bank
  - the various types of identifying information available and
  - the bank’s size, location, and customer base.”



### **Oversight by Boards and Senior Management**

- A reporting entity's AML/CTF program must be approved by its governing board and senior management.
- **The board and senior management must also have ongoing oversight of the AML/CTF program.**
- Where the reporting entity does not have a board, the AML/CTF program must be approved and overseen by its chief executive officer or equivalent.

### **AML/CTF Compliance Officer**

- A reporting entity must designate a person as the 'AML/CTF Compliance Officer' at the management level.
- The AML/CTF Compliance Officer may have other duties.



### **Independent Review**

- A reporting entity must ensure that its AML/CTF program is subject to regular independent review.
- The review may be carried out by either an internal or external party.
- The purpose of the review should be to:
  - assess the effectiveness of the AML/CTF program having regard to the ML/TF risk of the reporting entity;
  - assess whether the AML/CTF program complies with the Rules;
  - assess whether the AML/CTF program has been effectively implemented; and
  - assess whether the reporting entity has complied with its AML/CTF program.
- **The result of the review, including any report prepared, must be provided to senior management.**



### **Compliance reporting to AUSTRAC**

- AML/CTF Rules may be made requiring a reporting entity to give AUSTRAC a report about its compliance with the AML/CTF Act, Regulations and Rules during the reporting period specified in the Rules.
- Applies to all Reporting Entities



### **FATF Mutual Evaluation Report: Australia (October 2005)**

#### ***What FATF said about AUSTRAC's Regulatory Programs:***

1. AUSTRAC's on-site supervision activities do not cover the full range of compliance tools available under the FTR Act
2. AUSTRAC needs to develop an on-going and comprehensive system of on-site AML/CTF compliance inspections across the full range of financial institutions
3. AUSTRAC should be resourced to increase our staff numbers and to train existing staff; in particular in the conduct of on-site inspections, enforcement related activities and supervisory skills



### **AUSTRAC's Regulatory Role**

- **Focus:** To deter money laundering, tax evasion and the financing of crime and terrorism by promoting awareness of, and compliance with, Australia's anti-money laundering regime.
- Desktop audit
  - Monitor data quality
  - ARRAS — AUSTRAC's Regulatory Risk Analysis System
  - Timing / Volume / Completeness
- Referrals from partner agencies
- Education/fieldwork to assist cash dealers with reporting obligations
- Audit and compliance— inspection program
- Enforcement

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### **Recent**

- Higher focus on education—Working together to ensure compliance
  - Eg, success in identifying new Cash Dealers and bringing them into the system
- Underpins our strong ongoing performance as a Financial Intelligence Unit (FIU)

### **Current**

- FATF Mutual Evaluation recommendations
- A stronger focus on compliance inspections and if necessary, formal enforcement actions
  - Education and compliance teams split for greater compliance focus

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### **Education programs will continue**

- Education visits by AUSTRAC staff to cash dealer premises
- Industry-targeted advertising and awareness campaigns
- Education campaign—*Anti-Terrorism Act (No. 2) 2005* amendments to the FTR Act
- Regular consultation with stakeholder associations
- Cash dealer liaison through data quality discussions
- AUSTRAC's AML eLearning application
- AUSTRAC Help Desk — FTR Act queries



### **Revised Exposure Draft Bill**

#### **Audit**

- Authorised officers
- Entry to business premises by consent or monitoring warrant
- Requirement to carry out an external audit

#### **Information-gathering powers**

- Written notice requesting information or documents



**Enforcement—Revised Exposure Draft Bill**

- Civil penalty framework and criminal offences
- Monitoring & Remedial directions
- Injunctions
- Enforceable undertakings
- Infringement notices (cross-border reporting)
- Questioning, search and arrest (Customs and Police)
- Notices to reporting entities

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**Future**

- Ongoing development of AML/CTF Rules as required
- Implementation of the AT Act amendments to the FTR Act
- Continuing education program regarding the FTR Act (including amendments) and the Revised Exposure Draft Bill
- More comprehensive compliance inspection program
  - Across all regulated industry groups
  - Enhancement of risk assessment tools and systems
- Enforcement—use of powers as necessary

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