



# AML/CTF 2018 Updates

Current as at April 2018

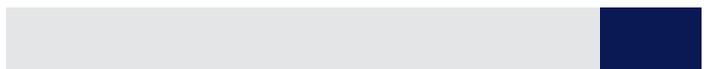
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# 1. Introduction

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Business who are reporting entities will welcome several practical changes to the AML/CTF landscape.

Back in 2013, the Government began a statutory review of the Anti-Money Laundering and Counter Terrorism Financing Act 2006 (the Act). The results of the review were published in 2016, where it was generally found that the Act and corresponding Anti-Money Laundering and Counter-Terrorism Financing Rules (the Rules) were far too complex and did not encourage compliance. Since then, the Act and Rules have undergone frequent amendments and enhancements with the overarching aim of simplification.

The Anti-Money Laundering and Counter-Terrorism Financing Rules Amendment Instrument 2017 (No4), the Anti-Money Laundering and Counter-Terrorism Financing Rules Amendment Instrument 2018 (No1) and the Anti-Money Laundering and Counter Terrorism Financing Rules Amendment Instrument 2018 (No2) have now been registered. The [Anti-Money Laundering and Counter-Terrorism Financing Rules Instrument 2007 \(No1\)](#) has been updated to incorporate these new Rule Instruments.

At a high level:

- ✓ the 2017 update added a new Chapter 75 which specifies that AUSTRAC may exempt reporting entities from their reporting requirements if the request has been made by an eligible agency (such as Australian Federal Police), and the agency reasonably believes that continuing to provide the designated service would assist their investigation.
- ✓ the 2018 (No1) update is more comprehensive (see below) and covers a broader range of topics, which include: Chapter 1 (definitions), Chapter 4 (Customer Due Diligence & Alternative verification), Chapters 8 & 9 (Risk Assessment & Independent reviews), Chapter 30 (disclosure certificates) and Chapter 36 (corporate structures). These changes came into effect on 12 January 2018; and
- ✓ the 2018 (No2) update primarily deals with closing the regulatory gap for digital currency exchange providers and provides some regulatory framework.

## 2. Explanation of Changes

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### Chapter 1: Definitions

Prior to the 2018 updates, businesses with overseas customers were faced with an awkward and unresponsive method of verifying identification. They would often have to rely on either notarised documents for the customer or certification by an Australian Consular Official – one too many hurdles for businesses to justify. So, the modification to allow for identification to be certified by ‘a person in a foreign country who is authorised by law in that jurisdiction to administer oaths or affirmations or to authenticate documents’ is a huge relief for some and encourages easier cross border verification.

In addition, the definitions of primary photographic, primary non-photographic and secondary identification have also been updated to make them more comprehensive, including the incorporation of national identity cards issued by the foreign countries which include a unique identifier rather than signatures.

### Chapter 4: Customer Due Diligence

Paragraph 4.12.2 is amended to expand the exemptions available for beneficial ownership. This now includes majority-owned subsidiaries of foreign publicly listed companies. The rationale behind the expansion is that these companies are already subject to disclosure requirements either by Stock Exchange Rules or through law or other enforceable means.

Taking the amendment into account, the requirement for the foreign disclosure requirements to be “the same as, or comparable to, the requirements in Australia” have now been deleted.

## Chapter 4: Alternative Verification Methods

A new paragraph 4.15 has been inserted into the Rules which deals with the situation when a customer is unable to provide primary or secondary identification in accordance with the standard procedures. This is often the case where the customer is, for example, a victim of a natural disaster, arrived in Australia undocumented, or identifies as transgender or intersex. The Government recognise the need to deal with these situations, but also that they will not arise frequently and so this provision is designed to be used in the most exceptional circumstances and should not be used as a substitute.

## Chapters 8 & 9: Risks Assessments & Feedback

An AML/CTF program should be designed to assist each reporting entity to identify, mitigate and manage ML/TF risks posed by customers. For that reason, Parts 8.1 and 9.1 have been amended to make the “identification, mitigation and management” of money laundering and terrorism financing risk a general requirement in respect of all new designated services, new methods of delivering the designated services, new technologies, and changes arising in the nature of the business relationship, control structure, and beneficial ownership of the customer.

The amended Rules have also modified the provisions relating to receiving and actioning of feedback from AUSTRAC. The Rules now require a reporting entity to take into account, when developing or updating their AML/CTF Program, any applicable guidance material disseminated or published by AUSTRAC, and any feedback provided by AUSTRAC in the industry in which the reporting entity operates, where that feedback is material to identification, mitigation and management of their ML/TF risks.

## Chapters 8 & 9: Independent Reviews

The term “independent” has never been clearly defined within the Act or the Rules. However, recent Rule changes now provide a bit more clarity on this with Parts 8.6 and 9.6 now requiring the reporting entity to guarantee the independence of the reviewer by demonstrating that the reviewer has not been involved in the design, implementation, maintenance or development of the reporting entities AML/CTF Program.

These restrictions are a lot less restrictive than those originally posed by AUSTRAC.

## Chapter 30: Disclosure Certificate

Amendments to Chapter 30 now allow for reporting entities to accept disclosure certificates, subject to meeting certain criteria, which have been certified by an appropriate officer of the customer, using a risk-based approach. This has a caveat that means the reporting entity must not accept the disclosure certificate if it has reason to believe that the information provided in the certificate is incorrect or otherwise unreliable.

## Chapter 36: Exemptions within a Corporate Structures

This chapter provides an exemption for designated services which are being provided by a business that is related to a customer. If the ML/TF risk is justified, the exemption can be extended to certain partnerships excluding limited partnerships.

## Digital Currency Exchange Providers

Digital Currency providers have been subjected to a number of changes recently, and the update incorporates guidance from the ATO, ASIC, ASX and AUSTRAC to cover what they considered to be regulatory gaps in the industry.

Digital Currency Exchange Providers are the first cryptocurrency-related businesses to be formally regulated under the AML/CTF regime. Whilst the Amendment Instrument came into effect on 3 April 2018 Providers have been given an assisted transitional period of six months to ensure compliance before the AUSTRAC CEO will start issuing penalties. The Provider will need to meet a range of measures as part of this assisted transitional process, including demonstrating that they are taking reasonable steps to become compliant.

Under the new law, Providers are now required to:

- ✓ Adopt and maintain an AML/CTF Program to identify, mitigate and manage any applicable risks
- ✓ Identify and verify their customers
- ✓ Report to AUSTRAC any suspicious matters, and transactions involving physical currency of more than \$10,000

- ✓ Keep certain records for seven years

Failing to comply with the new legislation is a strict liability offence which could see penalties issued involving imprisonment for 2-7 years.

### 3. Summary and Conclusion

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In summary, these updates and amendments, as well as additional industry guidance and publications from AUSTRAC, show a move towards the simplification of Act and the Rules, and a more practical approach to its regulation.

However, it is vitally important that the changes are actioned to maintain compliance in this area. Whilst the S.47 Annual Compliance Reporting requirements were removed for the 2017 calendar year, this does not mean a weakened regulatory approach to enforcement of the Act and Rules.

### How CompliSpace can help

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At CompliSpace we combine governance, risk, compliance and policy management expertise with technology solutions to deliver sustainable governance solutions to businesses in every state and territory in Australia. Our team of lawyers and industry experts actively monitor changes to relevant laws and registration standards and deliver a full suite of online policies, procedures and governance programs that enable businesses to continuously comply with their legal and regulatory obligations.

CompliSpace works with businesses to tailor compliance and risk management systems to a company's individual needs and characteristics, ensuring meaningful compliance with their legal and regulatory obligations.

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