Ethics Information Sheet

Ethical obligations in complying with the AML/CTF regime

Introduction

The Anti-Money Laundering and Counter-Terrorism Financing Amendment Bill 2024 received royal assent on 10 December 2024 which amends the *Anti-Money Laundering and Counter-Terrorism Financing Act 2006* (Cth) (**the Amendment Act**). The Amendment Act expands the Anti-Money laundering (**AML**) and counter-terrorism financing (**CTF**) regime to better capture high-risk sectors for money laundering and terrorism financing, including legal services.

This guideline examines the interaction of the AML/CTF regime with the professional ethical obligations of legal practitioners.

Practitioners who provide designated services under the Amendment Act (**reporting entities**) will have specific obligations that apply from 1 July 2026. The Law Institute of Victoria (**LIV**) has a dedicated online Anti-Money Laundering and Counter-Terrorism Financing Hub (**AML/CTF Hub**) which contains details of specific obligations as well as the most up-to-date information and resources about the impending introduction of the AML/CTF framework. We recommend that you visit the Hub, in addition to reading this Information Sheet.[1] The AML/CTF Hub also includes a list of designated services practical guidance on how practitioners can prepare before 1 July 2026.

It is also recommended that practitioners refer to AUSTRAC's guidance and materials, including the Core Guidance and Risk Indicators of suspicious activities to prepare for the regime.[2]

How do the AML/CTF reforms interact with our professional ethical obligations?

Solicitors in Australia are bound by enforceable rules of professional conduct. The Australian Solicitors' Conduct Rules (**ASCR**)[3] include several rules which are relevant to practitioners in managing their law practices to mitigate unlawful activities, including money laundering or the enabling of the financing of terrorism.

These rules include:

- **Rule 3:** paramount duty to the court and the administration of justice.
- **Rule 4:** duty to deliver legal services competently and diligently and avoid compromise to a solicitor's integrity.
- **Rule 5:** duty not to engage in conduct which may bring the profession into disrepute.
- **Rule 8:** duty to follow a client's lawful, proper, and competent instructions.
- **Rule 9:** duty not to disclose information that is confidential to a client, unless an exception is permitted in Rule 9.2.
- **Rule 13:** a solicitor can terminate a retainer for just cause and on reasonable notice.

[1] https://www.liv.asn.au/amlhub?srsltid=AfmBOopx3FlwU1d-VswLuCiVtWHEYJ9oA4acF8HFmGBAfyQ1wTTiYH6g.
[2] https://www.austrac.gov.au/business/core-guidance; https://www.austrac.gov.au/business/how-comply-guidance-and-resources/guidance-resources/risk-insights-and-indicators-suspicious-activity-real-estate-sector.
[3] *Legal Profession Uniform Law Australian Solicitors' Conduct Rules* 2015.

• **Rule 37:** duty for a solicitor with designated responsibility to exercise reasonable supervision.

Rule 3 – reporting obligations

Practitioners must submit a Suspicious Matter Report (**SMR**) to AUSTRAC if they suspect on reasonable grounds that a customer is not who they claim to be, or the designated service relates to any one of the following as described in the Rule including: terrorism financing, money laundering, an offence against certain Commonwealth, State or Territory law, proceeds of crime or tax evasion. The timeframes for submitting a SMR are:

- **Within 24 hours** if the suspicion is related to terrorism financing; or
- **Within 3 business days** if the suspicion is related to other matters such as money laundering.[4]

Suspicious matter reporting supports rule 3 of the ASCR, being the paramount duty to the court and the administration of justice. To determine whether a SMR is required, a solicitor must consider the true purpose of the client's activities and whether those activities may be furthering or obscuring any illegal or criminal purpose. This paramount duty is not limited to matters before a court, but underpins all actions taken by a solicitor, including decisions about whether to act, continue to act or report suspicions to AUSTRAC.

Following the repeal of the Financial Transaction Reports Act 1988 (**FTR Act**), solicitors are no longer required to report cash transactions of $10,000 or more to AUSTRAC for transactions received after 7 January 2025. Solicitors will have new obligations under the AML/CTF reforms coming into effect from 1 July 2026. Reporting a cash transaction (**threshold transaction**) of $10,000 or more as part of a designated service must occur within 10 business days of receipt of the transaction.[5]

Rule 4 - customer due diligence

Rule 4 of the ASCR requires, among other things, that a solicitor must deliver legal services competently and diligently and avoid compromise to their integrity. Meeting customer due diligence obligations under the AML/CTF regime is a key way in which practitioners give practical effect to rule 4.

To identify, mitigate and manage the risk that a law firm may wittingly or unwittingly be used to facilitate money laundering or to enable the financing of terrorism, practitioners need to, in their AML/CTF program, undertake initial and ongoing customer due diligence processes. Acting competently and diligently under rule 4 therefore includes:

- identifying and verifying each client for whom a designated service is provided; and
- engaging in ongoing monitoring of the client throughout the engagement to detect changes in risk.

In Victoria, solicitors and conveyancers are already subject to stringent identification and verification requirements for certain land transactions under the Participation Rules.[6] The AML/CTF regime goes beyond the standard verification of identity process as it requires a risk-based and ongoing approach extending the checks both before and during the provision of a designated service.[7]

Customer due diligence processes also require the reporting entity to develop and document an enhanced customer due diligence program and transaction monitoring program. Failing to implement and follow such programs may display a failure to act competently and diligently, and therefore compromise a solicitor's integrity contrary to rule 4. It is therefore important that practitioners familiarise themselves with the customer due diligence obligations to ensure they meet both legislative requirements and their ethical obligations.

Rule 5 – dishonest conduct

If a solicitor knowingly assists, encourages, or facilitates the movement and laundering of illicit funds and fails to make a SMR, the solicitor may be in breach of Rule 5 of the ASCR. This rule states that a solicitor must not engage in conduct, in the course of legal practice or otherwise, which calls into question whether he or she is a fit and proper person to

[4] Anti-Money Laundering and Counter-Terrorism Financing Act 2006 (Cth) s. 41(2). Note also s 41(2)(aa) will extend the timeframe to 5 business days where some of the information is protected by *legal professional privilege*.
[5] *Anti-Money Laundering and Counter-Terrorism Financing Act* 2006 (Cth) s. 43(2).

[6] Australian Registrars National Electronic Conveyancing Council, Victoria Participation Rules for Electronic Conveyancing (effective 28 March 2024).
[7] See AUSTRAC overview of customer due diligence: https://www.austrac.gov.au/about-us/amlctf-reform/reforms-guidance/amlctf-program-reform/customer-due-diligence-reform/overview-customer-due-diligence-reform.

practice law, would diminish public confidence, or bring the profession into disrepute.

This extends beyond deliberate participation in money laundering or terrorism financing. Conduct which may also breach rule 5 includes:

- turning a blind eye to obvious "red flags" where the retainer may involve the proceeds of crime; or
- structuring transactions or advice in a way the practitioner knows, or suspects, is designed to conceal the source or ownership of funds, or to avoid reporting obligations.

Such conduct risks not only criminal liability, but also regulatory action, including disciplinary proceedings and a finding that the solicitor is no longer a fit and proper person to hold a practising certificate. Robust adherence to the AML/CTF obligations, including timely SMR reporting, is therefore an important safeguard against breaching rule 5 and protects both the solicitor and standing of the profession.

Rule 8 – lawful purpose

Rule 8 of the ASCR provides that a solicitor must follow a client's lawful, proper and competent instructions. Compliance with rule 8 of the ASCR requires that a solicitor takes reasonable steps and make reasonable enquiries to ensure the client's instructions are for a lawful purpose and ensure that legal services are not unwittingly used to further criminal activity.

Customer due diligence processes form part of these reasonable steps. They require solicitors to question a client for the purposes of ascertaining a client's identity before accepting instructions to act,[8] understand the nature and purpose of the proposed transaction or matter and conduct ongoing monitoring to identify unusual or suspicious activity.

If after making reasonable enquiries, the solicitor is not satisfied that the client's instructions are for a lawful purpose, rule 8 and the AML/CTF obligations intersect. In some cases, this may require the solicitor to decline to act, to cease acting or lodge a SMR.

Rule 9 - confidentiality and legal professional privilege (LPP)

Rule 9 of the ASCR sets out a solicitor's duty of confidentiality and the limited exceptions that permit disclosure of confidential client information. Relevantly, these exceptions include:

- the disclosure is compelled by law (which now includes the Amendment Act);[9] or
- the disclosure is made for the sole purpose of avoiding the probable commission of a serious criminal offence.[10]

The reporting obligations under the AML/CTF reforms fall within the confidentiality exceptions (for example, in a SMR or threshold transaction report). In such circumstances, a practitioner may, and in fact must, disclose confidential client information to AUSTRAC to the extent necessary to comply with the statutory obligation.

Practitioners must, however, ensure that the confidential information is not also protected by LPP. The Explanatory Memorandum to the Amendment Act confirms that where a practitioner reasonably believes that such information or document is subject to LPP, disclosure is not required. Practitioners will be required to fulfil their reporting or information disclosure obligations to the greatest extent possible, to ensure LPP is preserved.

The Addendum to the Explanatory Memorandum also explains that a court, not AUSTRAC, remains the ultimate arbiter for any disputes over assertions of LPP that arise.

Under section 242A of the Amendment Act, the Minister may issue guidelines that will assist in reviewing assertions of legal professional privilege, and to inform any decisions to challenge such assertions. The LIV will publish further guidance, once the Minister issues any guidelines.

For a more detailed discussion of LPP and confidentiality, the LIV has a separate guideline: '*Balancing Legal Professional Privilege and the AML/CTF obligations*' which practitioners are encouraged to review.

[8] G E Dal Pont, *Lawyers' Professional Responsibility* (Thomson Reuters (Professional) Australia Limited, 8th ed, 2025) [3.35].

[9] See Rule 9.2.2 of ASCR.

[10] See Rule 9.2.4 of ASCR. See also VLSB+C resource: https://lsbc.vic.gov.au/lawyers/practising-law/professional-obligations/confidentiality-and-its-exceptions.

Rule 13 - terminating the retainer

Rule 13 of the ASCR allows a solicitor to terminate a retainer for just cause and on reasonable notice. The LIV's Terminating Client Engagement Ethics Guidelines,[11] lists several circumstances which may constitute 'just cause', including the continued representation of the client placing the solicitor in a clear conflict of interest.

The AML/CTF obligations may create such a conflict. If a solicitor submits a SMR to AUSTRAC about a client's activities, the solicitor may later be a material witness in any investigation or proceedings brought by AUSTRAC.[12] In this situation, continuing to act for the client once the suspicion has been formed and once the SMR or TTR has been submitted, may be incompatible with the solicitor's ethical duties justifying termination of the retainer.

At the same time, the AML/CTF regime restricts what the solicitor can tell the client. Section 123 of the *Anti-Money Laundering and Counter-Terrorism Financing Act 2006* (Cth) makes it an offence for a person who is, or has been, a reporting entity, to disclose that they have made a SMR except to limited recipients (such as an AUSTRAC entrusted person or external auditor). Section 123(4) specifically prevents a reporting entity from disclosing to their client that they have lodged a SMR to AUSTRAC.

Whilst the new tipping off provisions came into effect on 31 March 2025, these only apply to existing reporting entities. From 1 July 2026, the tipping off provisions will apply to all existing and new reporting entities, which will then include lawyers who provide designated services.

It is notable that the proposed tipping off offence is not intended to prevent a person from conducting customer due diligence checks, which includes asking a client for information about their identity in the preliminary stages of an engagement or throughout the retainer.

These overlapping obligations present complexities for practitioners and require careful management. In circumstances where a SMR has been, or is likely to be submitted, best practice is for the solicitor to:

- rely on rule 13 to terminate the retainer for just cause on reasonable notice; and
- inform the client that they are no longer able to act for the client, as doing so would be incompatible with the solicitor's ethical duties and professional obligations, without elaborating further.

Rule 37 – reasonable supervision

Law firms must also be mindful of Rule 37 of the ASCR, which requires a solicitor with designated responsibility for a matter to exercise reasonable supervision over solicitors and all other employees engaged in the provision of legal services for the matter.

In the AML/CTF context, reasonable supervision includes ensuring that staff:

- correctly apply customer due diligence procedures, including ongoing monitoring
- can recognise and escalate potential red flags for money laundering or terrorism financing
- understand when AML/CTF reporting obligations arise and who the appropriate person in the firm is to escalate them to
- do not "tip off" clients about any suspicion or report to AUSTRAC.

Supervising solicitors should also ensure that the firm has appropriate AML/CTF policies, training and file review processes and that staff follow them in practice. A failure to supervise staff who handle designated services may not only result in non-compliance with the AML/CTF regime but may also amount to a breach of rule 37 of the ASCR.

Consequences of not complying

AUSTRAC can take enforcement action against reporting entities who do not comply with AML/CTF legislation.

Enforcement actions include:

- Civil penalty orders (court-ordered fines)
- Enforceable undertakings
- Infringement notices
- Remedial actions

[11] https://www.liv.asn.au/download.aspx?DocumentVersionKey=28fa47fb-6296-4fed-902b-71e50550d5ab

[12] See LIV's Material Witness Guideline: https://www.liv.asn.au/download.aspx?DocumentVersionKey=82529d3d-6d0b-4b14-81f0-3cd135dadd18.

AUSTRAC can apply for a civil penalty order from the Federal Court of Australia.

The maximum penalty for breach of a civil penalty provision under the AML/CTF Act is:

- for individuals, 20,000 penalty units (as of 7 November 2024 this amounts A$6.6 million[13]) per breach; and
- for corporations, 100,000 penalty units (as of 7 November 2024 this amounts A$33 million[14]) per breach

How can we help you?

Visit the LIVs Ethics Hub at https://www.liv.asn.au/Ethics

These are guidelines only and do not have the force of law. A solicitor must comply with the *Legal Profession Uniform Law and Legal Profession Uniform Law Australian Solicitors' Conduct Rules 2015* and any other applicable rules or legislation.

To discuss concerns about terminating client engagement, contact the Ethics & Practitioner Support Department on (03) 9607 9336.

[13] Australian Securities and Investments Commission, 'Fines and penalties' (Webpage, updated 6 November 2024) <https://asic.gov.au/about-asic/asic-investigations-and-enforcement/fines-and-penalties/>.

[14] Ibid.