

The KordaMentha logo is a white rectangular box with the company name inside, set against a dark blue background with a subtle grid pattern.

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AML/CTF reforms

Real Estate Industry:
Understanding the AML/CTF reforms

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Real Estate Industry: Understanding the AML/CTF Amendments

In November 2024, reforms to the Anti-Money Laundering and Counter-Terrorism Financing Act 2006 were passed by Parliament. Real estate businesses will need to comply with all obligations from 1 July 2026.

These changes have been introduced to strengthen Australia's stance on money laundering and terrorism financing, and bring anti-money laundering laws in line with international standards recommended by the global body, the Financial Action Task Force. The changes aim to ensure Australia is able to respond to evolving threats and harden businesses against exploitation by criminals.

Below is a summary of the key areas that the real estate sector needs to be aware of.

Real estate businesses will be captured as 'reporting entities' under the AML/CTF regime and will have a series of new obligations relating to identifying, assessing, mitigating and managing their money-laundering, terrorism financing and proliferation financing (ML/TF) risks.

The use of real estate as a money laundering method is prevalent around the world. AUSTRAC's Money Laundering in Australia National Risk Assessment 2024 assesses the domestic real estate sector as posing a very high and stable money laundering vulnerability. According to AUSTRAC, real estate can be exploited at all stages of the money laundering cycle and is widely exploited in Australia due to our market stability and value appreciation, foreign investment, profit-generation, negative gearing benefits, housing and rental income functions of the sector.

Real estate forms a significant portion of criminal assets restrained by the Australian Federal Police (AFP). Of the \$352 million of assets seized in the last year by the AFP, 65% was made up of real estate assets.

Breadth of reforms

– activities to be captured

What services will be captured?

Both domestic and foreign residential and commercial real estate will be captured.

Businesses will be captured when they undertake certain services (known as ‘designated services’). The following are examples of the types of services:

- Brokering the sale, purchase or transfer¹ of ownership of real estate on behalf of a person in the course of carrying on a business. Services captured will predominantly be performed by real estate agents and any other business that represent a seller or buyer.
- Circumstances involving the selling or transferring of real estate that is not brokered by an independent real estate agent, including the involvement of an in-house real estate agent. This would include property developers, businesses who sell house and land packages, apartments off the plan, and blocks of vacant land in new subdivisions.

The activities at which a service will be considered to be provided are:

- when an agency agreement to sell a property is signed by a proposed seller.
- when it is reasonably expected that a transaction will proceed (for example, acceptance of a buyer’s offer and signing of a contract).
- when an agency agreement to source or identify a property is signed by a proposed buyer.

What services will not be captured?

The proposed reforms do not intend to regulate services related to:

- residential tenancy agreements
- property management
- leasing of commercial real estate.
- auctioneer services, unless the auctioning services are being provided by the seller’s agent alongside brokering the sale of the real estate.
- incidental sales of real estate by a business and private sales of residential property involving direct negotiation and sale and purchase without engaging a real estate agent.

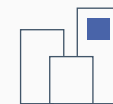
¹ The inclusion of ‘transfer’ is intended to prevent criminals from taking advantage of loopholes in regulation by capturing situations where ownership is transferred for no value or consideration.





What obligations will real estate agents be required to meet?

Businesses that provide services to customers under the Anti-Money Laundering and Counter-Terrorism Financing Act 2006 (AML/CTF Act) will be regulated by AUSTRAC and have a number of obligations, including:



ML/TF risk assessment

The AML/CTF Act is risk-based, recognising that businesses are best placed to know their risks and customers. The risk-based approach allows you to focus your resources proportionately to those risks.

In undertaking the assessment, you need to consider:

- your customer types
- the types of services you provide
- how you provide them (i.e., face to face, on-line etc)
- the jurisdictions you deal with; and
- certain information communicated by AUSTRAC.

The ML/TF risk assessment must be documented, supported by a methodology, approved by your senior management and allow your board (or governing body) to provide strategic oversight of the risk your business faces.



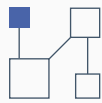
Develop and maintain an AML/CTF Program

Once the ML/TF risks are identified, you must develop an AML/CTF Program that includes all policies, procedures, systems and controls that are undertaken to mitigate and manage your ML/TF risks. The requirements of your AML/CTF Program are prescribed, however how you meet them is dependent on the risks you face.

Examples of the requirements include initial and ongoing customer due diligence, personnel due diligence, AML/CTF risk awareness training and conducting an independent evaluation of your AML/CTF Program.

Your AML/CTF Program must be approved by senior management and allow the board (or governing body) to maintain strategic oversight of the implementation of your AML/CTF Program.

You must comply with the policies, procedures, systems and controls in your AML/CTF Program.



Appoint an AML/CTF Compliance Officer

You must appoint an AML/CTF compliance officer (AMLCO) who is an individual at management level who has met the relevant ‘fit and proper’ requirements. You must notify AUSTRAC who that person is.

Your AMLCO must oversee and coordinate your day-to-day compliance with AML/CTF legislation and your AML/CTF policies and communicate with AUSTRAC on behalf of your business.

Your AMLCO must have sufficient authority, independence, access to resources and information to ensure they perform their function effectively.



Undertake initial and ongoing customer due diligence

You must undertake both initial and ongoing customer due diligence (CDD). Initially you will be required to know your customer (i.e. establish that the customer is who they claim to be) and understand the ML/TF risk the customer presents to your business.

To avoid duplication where there are multiple businesses involved in a real estate transaction, reliance on CDD undertaken by another business can occur. For example, a real estate agent may rely on a conveyancer or vice versa under certain circumstances.

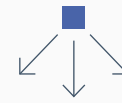
On an ongoing basis, you will be required to monitor your customers for any suspicious activity, update their ‘know your customer’ information and undertake enhanced customer due diligence for certain higher risk customers.



Report certain matters to AUSTRAC

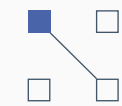
You will be required to report threshold transactions (i.e. physical cash transactions of \$10,000 or more) and suspicious matters to AUSTRAC.

On an annual basis (usually by 31 March each year), you must submit a compliance report to AUSTRAC that outlines how you are complying with the various obligations under the AML/CTF Act.



Record keeping

Records relating to customer due diligence, transactions and AML/CTF Programs **must** be maintained.



Enrol with AUSTRAC

As an entity with obligations under the AML/CTF Act you will be required to enrol with AUSTRAC and provide certain information about your business and key personnel within specified timeframes.



Reporting group

If you operate under a franchise model you will be able to form a ‘reporting group’. This will allow flexibility in facilitating your group-level ML/TF risk and compliance management and assist in ensuring your network of franchisees have the capability and consistency in meeting their AML/CTF requirements.



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The logo for KordaMentha, featuring the company name in a white sans-serif font inside a white rectangular border with a small notch on the top-left corner.

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