

Afterpay

Any provisions of the AML/CTF Act and/or the AML/CTF Rules which the external auditor concludes Afterpay has not complied with or is not complying with; and  
The facts on which the auditor has relied to conclude any provisions identified in (a) have not been or are not being complied with; and  
Any measures which the external auditor believes Afterpay should implement to ensure that it complies with the AML/CTF Act and the AML/CTF Rules; and  
The capacity of Afterpay to implement the measures set out in (c).

Report

36 Ongoing customer due diligence  
(1) A reporting entity must:  
(a) monitor the reporting entity's customers in relation to the provision by the reporting entity of designated services at or through a permanent establishment of the reporting entity in Australia, with a view to:  
(i) identifying; and (ii) mitigating; and  
(iii) managing; the risk the reporting entity may reasonably face that the provision by the reporting entity of a designated service at or through a permanent establishment of the reporting entity in Australia might (whether inadvertently or otherwise) involve or facilitate:  
(iv) money laundering; or  
(v) financing of terrorism; and  
(b) do so in accordance with the AML/CTF Rules.  
Civil penalty  
(2) Subsection (1) is a civil penalty provision.

Ongoing customer due diligence (Part 2, Division 6 of the AML/CTF Act)  
i. Chapter 15 Ongoing Customer Due Diligence

KYC information and Beneficial Owner Information  
Transaction monitoring program  
Enhanced customer due diligence program

(1) This section applies to a reporting entity if:  
(a) at a particular time, the reporting entity has carried out, or has purported to carry out, the applicable customer identification procedure in respect of a particular customer to whom the reporting entity provided, or proposed to provide, a designated service; and  
(b) at a later time, any of the following subparagraphs applies:  
(i) an event prescribed by the AML/CTF Rules happens;  
(ii) a circumstance specified in the AML/CTF Rules comes into existence;  
(iii) a period ascertained in accordance with the AML/CTF Rules ends.

Requirement  
(2) The reporting entity must:  
(a) take such action as is specified in the AML/CTF Rules; and  
(b) do so within the time limit allowed under the AML/CTF Rules.  
Civil penalty  
(3) Subsection (2) is a civil penalty provision.

Part 6.2 Verification of the identity of customers for the purposes of section 35  
6.2.1 For the purposes of subparagraph 35(1)(b)(ii) of the AML/CTF Act, section 35 will apply to a reporting entity in circumstances where the reporting entity suspects on reasonable grounds that the customer is not the person that he or she claims to be.  
6.2.2 Where the circumstance specified in paragraph 6.2.1 above comes into existence, the specified action for the purposes of subsection 35(2) of the AML/CTF Act is set out at paragraph 6.2.3 below.  
6.2.3 The reporting entity must, within 14 days commencing after the day on which the circumstance specified in paragraph 6.2.1 above comes into existence, take one or more of the actions specified below:  
(1) collect any KYC information in respect of the customer; or  
(2) verify, from a reliable and independent source, certain KYC information that has been obtained in respect of the customer; for the purpose of enabling the reporting entity to be reasonably satisfied that the customer is the person that he or she claims to be.

Verification of identity of customer etc (Part 2, Division 5 of the AML/CTF Act)

Part 6.1 Verification of identity of customers  
6.1.1 These Anti-Money Laundering and Counter-Terrorism Financing Rules (Rules) are made pursuant to subsection 29(2), subsection 31(2), subparagraph 35(1)(b)(ii), subsection 35(2) and section 229 of the Anti-Money Laundering and Counter-Terrorism Financing Act 2006 (AML/CTF Act).

84 Standard anti-money laundering and counter-terrorism financing program  
Rule 8 - AML/CTF Programs

AML/CTF programs (Part 7, Division 3 of the AML/CTF Act)

Suspicious matter reporting obligations (Part 3, Division 2 of the AML/CTF Act)

i. Reportable details for suspicious matters (Chapter 18 of the AML/CTF Rules)

Part 6.4 Verification of the identity of low-risk service customers  
6.4.1 For the purposes of subsection 31(2) of the AML/CTF Act, the specified action is as set out in paragraph 6.4.2 below.  
6.4.2 The reporting entity must, within 14 days starting after the day on which the suspicious matter reporting obligation arose, take one or more of the actions specified below:  
(1) carry out the applicable customer identification procedure unless the reporting entity has previously carried out or been deemed to have carried out that procedure or a comparable procedure;  
(2) collect any KYC information in respect of the customer; or  
(3) verify, from a reliable and independent source, certain KYC information that has been obtained in respect of the customer; for the purpose of enabling the reporting entity to be reasonably satisfied that the customer is the person that he or she claims to be.

Identification Low-risk service customers

Identification procedures for certain low-risk services (Part 2, Division 3 of the AML/CTF Act)  
i. Verification of the identity of low-risk service customers (Chapter 6, Part 6.4 of the AML/CTF Rules)

30 Identification procedures for certain low-risk services  
Scope  
(1) This section applies to the provision by a reporting entity of a designated service to a customer if, under the AML/CTF Rules, the service is taken to be a low-risk designated service.  
(2) Sections 32 and 34 do not apply to the provision by the reporting entity of the designated service to the customer.  
Note: For special rules about verification of identity etc., see section 31.  
31 Verification of identity of low-risk service customer etc.  
Scope  
(1) This section applies to a reporting entity if:  
(a) at a particular time (the relevant time), the reporting entity commences to provide a designated service to a customer; and  
(b) under the AML/CTF Rules, the service is taken to be a low-risk designated service; and  
(c) at the relevant time or a later time, a suspicious matter reporting obligation arises for the reporting entity in relation to the customer.  
Note 1: For suspicious matter reporting obligation, see section 41. Note 2: For tipping-off offences, see section 123.  
Requirement  
(2) The reporting entity must:  
(a) take such action as is specified in the AML/CTF Rules; and

Low risk - civil penalty

Customer identification

Applicable customer identification procedures (ACIP) (Part 2, Division 4 of the AML/CTF Act)

ACIP with respect to individuals, companies, trustees and partnerships (Chapter 4, Parts 4.2, 4.3, 4.4 and 4.5 of the AML/CTF Rules)

Applicable customer identification procedure with respect to individuals  
Applicable customer identification procedure with respect to companies  
Applicable customer identification procedure with respect to trustees  
Applicable customer identification procedure with respect to partners

Verification from documentation and from reliable and independent electronic data (Chapter 4, Parts 4.9 and 4.10 of the AML/CTF Rules)

Verification from reliable and independent electronic data

Collection and Verification of Politically Exposed Person information (Chapter 4, Part 4.13 of the AML/CTF Rules)

Civil penalty

81 Reporting entity must have an anti-money laundering and counter-terrorism financing program  
(1) A reporting entity must not commence to provide a designated service to a customer if the reporting entity:  
(a) has not adopted; and  
(b) does not maintain; an anti-money laundering and counter-terrorism financing program that applies to the reporting entity.

82 Compliance with Part A of an anti-money laundering and counter-terrorism financing program  
Compliance with program  
(1) If a reporting entity has adopted:  
(a) a standard anti-money laundering and counter-terrorism financing program; or  
(b) a joint anti-money laundering and counter-terrorism financing program; that applies to the reporting entity, the reporting entity must comply with:  
(c) Part A of the program; or  
(d) if the program has been varied on one or more occasions— Part A of the program as varied.  
Civil penalty  
(2) Subsection (1) is a civil penalty provision.

Reporting entity's obligations (Part 7, Division 2 of the AML/CTF Act)

Potential regulatory action

Infringement notice (identification, reporting smr)  
Enforceable undertaking  
Civil penalty (Penalty units)  
Fines (Too early to say, Each discrete breach x penalty unit, CBA 700M more serious, TABCORP 45M - more serious, Penalty unit (170, 180, 210), KYC (1,000,000 x 210) 210M)  
ASIC (Investigation (directors duties, continuous disclosure))  
Other (Overseas, Class action)  
Penalties are negotiated in Australia

Key issues Potentially

Governance  
Having and following a compliant AML/CTF Program  
Providing services before customer identified  
Identifying customers correct  
Ongoing customer due diligence - transaction monitoring  
Suspicious matter reports