

Division 2—Suspicious matters

41 Reports of suspicious matters

Suspicious matter reporting obligation

- (1) A suspicious matter reporting obligation arises for a reporting entity in relation to a person (the **first person**) if, at a particular time (the **relevant time**):
- (a) the reporting entity commences to provide, or proposes to provide, a designated service to the first person; or
 - (b) both:
 - (i) the first person requests the reporting entity to provide a designated service to the first person; and
 - (ii) the designated service is of a kind ordinarily provided by the reporting entity; or
 - (c) both:
 - (i) the first person inquires of the reporting entity whether the reporting entity would be willing or prepared to provide a designated service to the first person; and
 - (ii) the designated service is of a kind ordinarily provided by the reporting entity;
- and any of the following conditions is satisfied:
- (d) at the relevant time or a later time, the reporting entity suspects on reasonable grounds that the first person is not the person the first person claims to be;
 - (e) at the relevant time or a later time, the reporting entity suspects on reasonable grounds that an agent of the first person who deals with the reporting entity in relation to the provision or prospective provision of the designated service is not the person the agent claims to be;
 - (f) at the relevant time or a later time, the reporting entity suspects on reasonable grounds that information that the reporting entity has concerning the provision, or prospective provision, of the service:

- (i) may be relevant to investigation of, or prosecution of a person for, an evasion, or an attempted evasion, of a taxation law; or
- (ii) may be relevant to investigation of, or prosecution of a person for, an evasion, or an attempted evasion, of a law of a State or Territory that deals with taxation; or
- (iii) may be relevant to investigation of, or prosecution of a person for, an offence against a law of the Commonwealth or of a State or Territory; or
- (iv) may be of assistance in the enforcement of the *Proceeds of Crime Act 2002* or regulations under that Act; or
- (v) may be of assistance in the enforcement of a law of a State or Territory that corresponds to the *Proceeds of Crime Act 2002* or regulations under that Act;
- (g) at the relevant time or a later time, the reporting entity suspects on reasonable grounds that the provision, or prospective provision, of the service is preparatory to the commission of an offence covered by paragraph (a), (b) or (c) of the definition of **financing of terrorism** in section 5;
- (h) at the relevant time or a later time, the reporting entity suspects on reasonable grounds that information that the reporting entity has concerning the provision, or prospective provision, of the service may be relevant to the investigation of, or prosecution of a person for, an offence covered by paragraph (a), (b) or (c) of the definition of **financing of terrorism** in section 5;
- (i) at the relevant time or a later time, the reporting entity suspects on reasonable grounds that the provision, or prospective provision, of the service is preparatory to the commission of an offence covered by paragraph (a) or (b) of the definition of **money laundering** in section 5;
- (j) at the relevant time or a later time, the reporting entity suspects on reasonable grounds that information that the reporting entity has concerning the provision, or prospective provision, of the service may be relevant to the investigation of, or prosecution of a person for, an offence covered by

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paragraph (a) or (b) of the definition of *money laundering* in section 5.

Report

- (2) If a suspicious matter reporting obligation arises for a reporting entity in relation to a person, the reporting entity must give the AUSTRAC CEO a report about the matter within:
- (a) if paragraph (1)(d), (e), (f), (i) or (j) applies—3 business days after the day on which the reporting entity forms the relevant suspicion; or
 - (b) if paragraph (1)(g) or (h) applies—24 hours after the time when the reporting entity forms the relevant suspicion.
- (3) A report under subsection (2) must:
- (a) be in the approved form; and
 - (b) contain such information relating to the matter as is specified in the AML/CTF Rules; and
 - (c) contain a statement of the grounds on which the reporting entity holds the relevant suspicion.

Note 1: For additional rules about reports, see section 244.

Note 2: Section 49 deals with the provision of further information, and the production of documents, by the reporting entity.

Civil penalty

- (4) Subsection (2) is a civil penalty provision.

Reasonable grounds for suspicion

- (5) The AML/CTF Rules may specify matters that are to be taken into account in determining whether there are reasonable grounds for a reporting entity to form a suspicion of a kind mentioned in paragraph (1)(d), (e), (f), (g), (h), (i) or (j).

Note: For specification by class, see subsection 13(3) of the *Legislation Act 2003*.

42 Exemptions

- (1) This Division does not apply to a designated service that is of a kind specified in the AML/CTF Rules.
- (2) The AML/CTF Rules may provide that a specified provision of this Division does not apply to a designated service that is of a kind specified in the AML/CTF Rules.
- (3) This Division does not apply to a designated service that is provided in circumstances specified in the AML/CTF Rules.
- (4) The AML/CTF Rules may provide that a specified provision of this Division does not apply to a designated service that is provided in circumstances specified in the AML/CTF Rules.
- (5) This Division does not apply to a designated service that is provided by a reporting entity at or through a permanent establishment of the entity in a foreign country, other than a service covered by item 32A of table 1 in section 6.