



MOULDENS

SOLICITORS

NEWSLETTER

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ANTI MONEY LAUNDERING & COUNTER TERRORISM FINANCING

The Federal Government proposes to enact legislation to assist in the detection of money laundering and identification of terrorism activities.

The legislation is expected to replace the Financial Transactions Report Act 1988. The legislation will comprise:

- the Anti Money Laundering & Counter Terrorism Financing Act;
- Rules made by the Australian Transaction & Reporting Centre (AUSTRAC) under the Act to be known as the AML/CTF Rules; and
- Regulations promulgated under the Act by the Governor General.

The **purpose** of the legislation will be to require a **provider of designated services** listed in the Act (principally financial institutions but may include accountants and lawyers) and referred to as a **reporting entity**,

- to verify the identity of customers,
- monitor the customers and their transactions,
- identify AML/CTF risks,

- report to AUSTRAC suspicious matters, any transactions above \$10,000.00 (threshold transactions), bearer negotiable instruments and international fund transfers,
- to retain records of information relating to the provision of the service for a minimum period of **seven years**, including the identification procedures, transfer instructions and correspondent banking relationship, and
- to comply with an AML/CTF programme. The **primary purpose** of such a programme will be to ensure that a reporting entity is alert to the risk and will be able to identify, mitigate and manage it.

A reporting entity will face a risk if it provides a service through a permanent establishment in Australia or internationally which may facilitate money laundering or financing of terrorism.

The provisions of the Act **will aim** also to avoid a customer being alerted to any reporting by a reporting entity. The formation of a suspicion or the report of a suspicious matter will not be able to be disclosed nor any information from which it can be inferred that information has been communicated to AUSTRAC or that AUSTRAC has requested further information in consequence of a report being made.

Reports of suspicious activities will not be admissible in evidence, nor will any part of the information in the report.

The **Australian Taxation Office** will have access to information given to AUSTRAC.

AUSTRAC may authorise designated agencies such as **ASIO, Customs Service, AFP, Australian Crime Commission and the Police Forces of the States and Territories** to be given or have access to the information held by AUSTRAC.

AUSTRAC may also provide its information to the Government of a foreign country if the CEO of AUSTRAC is satisfied that appropriate undertakings relating to confidentiality and control of the use that will be made of the information are given and ensuring that the information will only be used for the use notified. Designated agencies may pass on the information upon similar undertakings being given.

AFP and Customs Officers will have **search powers** at points of entry and exit into Australia, usually a departure lounge or the Customs desk at the airport. The Officers will have the power to:

- search for physical currency; or
- search for bearer instruments;
- arrest offenders without warrants; and
- give or hand out expiation notices.

The Act will **apply** to partnerships, unincorporated associations and trusts with multiple trustees. The draft bill provides that legal professional privilege is not to be affected by its provisions.

If the CEO of AUSTRAC has reasonable grounds to suspect that a reporting entity has not taken or is not taking appropriate action to identify, mitigate and manage the risk that the entity may face, the CEO will have power to:

- monitor a reporting entity's performance of its obligations under the Act,

- give written notice to that entity to appoint an external auditor;
- arrange for that external auditor to carry out an external audit to identify, mitigate and manage the risk;
- provide for the auditor to give the reporting entity a written report; and
- copy the report to AUSTRAC.

WORKPLACE RELATIONS REFORM – WORK CHOICES

On 27 March 2006 the Workplace Relations Amendment (Work Choices) Act 2005 and the Workplace Relations Regulations 2006 came into full operation ("Work Choices"). As a part of the new legislative scheme the Australian Fair Pay and Conditions Standard ("the Standard") has been created – these are the minimum employment conditions allowed under Work Choices and apply to all employees from the lowest to the highest.

The Standard provides for :

- a maximum 52 weeks of unpaid parental leave;
- four weeks paid annual leave;
- a maximum 38 ordinary hours of work per week;
- 10 days of paid personal/carer's leave (including sick leave); provision for an additional 2 days of unpaid carer's leave per occasion and an additional 2 days of paid compassionate leave per occasion; and
- a minimum wage (currently \$12.75 per hour).

Work Choices focuses on the use of Australian Workplace Agreements ("AWA's") as the primary (and preferred) means of governing the employer / employee relationship. The majority of AWA's will be singular or collective. Careful thought needs to be given before choosing which AWA will be the most appropriate.

The process of agreement making has been streamlined. Under Work Choices :

- an AWA comes into effect once it has been signed by the parties to it.
- AWA is then lodged with the OEA without any need for it to be reviewed and approved.
- It is to be noted that the OEA will conduct random audits to ensure that AWA's do not contain any "prohibited content".

When offering an AWA to employees it is mandatory that they are also provided with an OEA Employee Information Statement.

Although Work Choices places a strong emphasis upon AWA's employers should be aware that common law employment contracts are still available. For some employers the use of a common law contract may be a more efficient method of crystallizing the employment relationship. Employers who are covered by Work Choices must be aware that the Standard remains relevant and will need to be taken into consideration.

The most significant feature of Work Choices is that it removes an employees right to pursue an unfair dismissal application where the employer has less than 100 employees. Employees can only seek relief through the unlawful termination provisions of Work Choices. In determining whether an employer has 100 employees or less regard is had to all full-time, part-time and casual employees. An employer will not be able to bring themselves within this protection by suitably restructuring as Work Choices provides that the 100 count is taken to also include employees of associated/group entities.

Further relief has also been provided to businesses with less than 15 employees whereby they are exempt from having to pay redundancy.

The Regulations prescribe more onerous record keeping requirements upon employers. The main items are as follows :-

- Detailed records of employee information must be kept and retained for 7 years

- Retain AWA's for 7 years post termination of the agreement
- Record the manner in which an employee was terminated and the name of the person who acted to terminate the employee
- Record the number of hours worked by each employee during each day

The main purpose of these regulations is to protect employees by allowing access to those records and to ensure that employees receive all of the minimum entitlements guaranteed by the Standard.

There was an initial 6 month grace period on the record keeping requirements so that employers could develop procedures to effectively deal with the increased requirements. The grace period was to end on 26 September 2006 but has been extended for a further 6 month period to the 26 March 2007.

Work Choices has transitional arrangements in place but these are complex and beyond the scope of this article.

Although the legislation has been challenged in the High Court the outcome is uncertain and present planning should be done on the basis that the legislation will remain.