

Presentation to Parliamentary Joint Committee on Law Enforcement

AML Master has submitted two papers to the Attorney-General's Department in 2014 on the Australian AML/CTF regime.¹ AML Master is keen to place several important ideas before the Committee which would improve the effectiveness of the current regime and therefore help law enforcement. These ideas are also reflected in those papers.

This paper stems from my consulting work and training work since December 2006 when the legislation was introduced. My comments are derived from what is observed about the real effectiveness of the AML/CTF regime which is not measured in compliance terms. Whilst they may seem tangential to the CDD paper, they influence this submission.

Effectiveness of the current AML/CTF regime

In the context of financial crime, the key quality required of the applicable legal regime is effectiveness. Ineffective laws and poor practices do not lead to a reduction in financial crime.

The current regime in Australia does not work effectively outside the large reporters (the big banks) which are better resourced to understand this regime and realise the national and regulatory compulsion to work towards effective outcomes than smaller reporting entities. Even within the large reporters, effective outcomes are often aspirational rather than achieved.

My reasons for saying that the current regime does not work as effectively as it could is because of:

- the sheer weight of the *AML/CTF Act* (354 pages), the *AML/CTF Rules* (284 pages), 12 *Public Legal Interpretations*, more than 20 guidance notes and a regulatory manual of 290 pages, all of which a reporting entity must digest to find the subset of documents that apply to it; and²
- the way that the risk-based approach has been deployed whereby the minimum controls articulated by the AML/CTF framework have been interpreted by the financial services sector as all that they need to do in most circumstances.

Unless they use the services of the consulting sector or law firms, small and medium sized businesses struggle to produce a compliant AML/CTF program let alone implement it. This creates

¹ One responded to the 2014 CDD rules which have now being registered and the other responded to the legislative review of the AML/CTF Act which is currently underway.

² Some of this material was generated in response to requests from industry but as a collected mass it acts as a regulatory excluder for small business. It is mostly repetitious and indigestible in the hands of small business which comprise probably more than 70% of reporting entities. It generates between 550 and 575 separate elements to be scored in an independent review, depending on the designated services provided. Those numbers do not yet include the 2014 CDD rules. See final page in this document for details of the number of pages.

“regulatory exclusion” because small business³ struggles to comply with AML/CTF regulation because of its complexity and prolixity and because they cannot afford to buy the expertise to assist them. They generally are so annoyed or exhausted by the process of documenting the AML/CTF program that adoption and adherence becomes a step too far. They cannot generally justify the cost of the services of someone to implement their program into their business unless they are already being managed by the Enforcement section of AUSTRAC. Even then the cost of paying someone to help them manage the enforcement actions and help them implement better controls is often enough to kill off many businesses who are not large reporters.

Key summary of changes that could be made to improve effectiveness and reduce AUSTRAC’s costs and costs of reporting entities

- Law enforcement relies on data about financial transactions gathered by AUSTRAC from reporting entities through their compliance with reporting obligations. The better that data the more effective is the AML/CTF regime.
- To move towards for effectiveness, small – medium sized businesses would benefit from assistance through a regulator approved AML/CTF program suitable to their sector.⁴ In no way is this proposed as a deviation from the current risk-based approach. This regulator provided assistance could include:
 - An approved program for each different sector (remitters, cash in transit, FX dealers, managed funds, lenders etc.)⁵
 - Short training courses
 - Assessment processes and accreditation.
- AUSTRAC can then focus its attention on the effectiveness of the reporting entity’s procedures and not on having to word-smith the thousands of programs that have been generated individually across the population of more than 13,000 reporting entities. Reporting entities would save money on producing AML/CTF programs and keeping them current. They could also be confident that one risk has been reduced, being the regulatory risk of having a non-compliant AML/CTF program.
- All remittance businesses should be subject to maximum thresholds above which payments cannot be made (for example in the order of no more than \$5,000 in one transaction and \$10,000 per month).⁶ Breach of one of these thresholds should be a criminal offence for the

³ This term is used in this submission to include micro-businesses (less than 5 employees), small business (20 or less employees) and medium sized businesses (up to 100 employees). The vast majority of the 70% of small reporting entities seem to be either micro or small using this definition.

⁴ At present each reporting entity writes their own AML/CTF program, or pays a third party to write it. Fees can vary from \$2000 to \$250,000 depending on the size and nature of the entity.

⁵ Large reporters would be excluded from this standard program as might other complex or unusual or high volume businesses.

⁶ Personally I think these amounts are excessive and could be lowered.

remitter and the reporting entity that is giving effect to the remittance. These thresholds will restore remittances to their true purpose of financial support for low income families in countries that suffer from financial exclusion.

- Independent reviews (part of the AML/CTF rules) are an unreasonable cost burden for small and medium sized businesses and ineffective in helping these businesses better understand or manage their ML/TF risks. They should be replaced with a more appropriate process that balances the risk of the reporting entity to the AML/CTF regime with their capacity to manage a highly complex set of legislative requirements. A proper review that satisfied regulatory requirements would cost between \$5,000 and \$10,000 for a small reporting entity which is simply unaffordable. Independent reviews are an unreasonable cost burden for small and medium sized reporting entities. To the extent that they are relied on by AUSTRAC as an effective means of transferring an aspect of supervision to reporting entities and their reviewers it is my opinion that they do not often deliver on this objective because of the low standard of the completed reviews.

My work with AML Master since 2006, has led me to the following additional conclusions:

- The current regime is largely ineffective particularly outside the cohort of large reporters who number 17. One of the fundamental reasons is its prolixity and complexity.⁷ It is not understood by the vast majority of small business and even some large reporters exhibit difficulty in understanding certain requirements. Another reason is the absence of strong and consistent enforcement actions leading to soft and sub-optimal regulatory outcomes.
- Surprisingly, many AML/CTF compliance officers in reporting entities do not understand the finer points of the framework, and ultimately develop system and controls within their reporting entities that contribute to the weakness and complexity of the current regime.
- For gambling service providers, bullion dealers, remitters and cash in transit providers the depth of regulation set out in the AML/CTF framework takes them into an unfamiliar regulatory world which is based on a design for a typical major Australian bank.

The recent move by AUSTRAC to introduce a plan to develop heightened cooperation between AUSTRAC and reporting entities from culturally and linguistically diverse backgrounds fits with this concept of simplifying the documented program requirements.⁸ It is assumed that the AMP will be fully funded despite the change in government. The AMP is somewhat inconsistent with the current unilateral de-banking of remitters by large reporters. Establishing a legal right of a person (including a non-individual) to have a bank account is an audacious suggestion. It would raise many issues for reporting entities, but the current approach of de-banking is simply wrong.

Internationally Australia leads the G20 nations on remittance systems as one of its member responsibilities. Domestically Australia sees remitters as extreme risk and this view percolates

⁷ Even the major reporters struggle to understand requirements that span more than 2,200 pages (see the Appendix to this submission).

⁸ Page 1 of the AUSTRAC agency multicultural plan 2013-15 (AMP). AML Master is currently moving to translating certain programs for independent remitters into Vietnamese, Chinese, Arabic and other languages as the need arises, to run in parallel with the English version which is the predominant document.

through to the large reporters who in turn treat them as low hanging fruit on which they may demonstrate the power of their ML/TF risk controls. This has resulted in a flood of debanking by major reporters which appears to be tacitly support by AUSTRAC and others such as AGD, DFAT and Law Enforcement. The response might be valid but is not aligned with the role Australia takes in the G20.

Missing participants

Every holder of an account or a relationship with a reporting entity should be subject to legal obligations to provide all of the information asked for by its reporting entity and keeping that information up to date. There is no basis for excluding the population from doing their part in a regime designed to benefit the whole of the Australian community. Just as people must comply with road laws to drive vehicles, people entering into relationships with reporting entities should be subject to obligations themselves regarding their information and compliance with these laws.

The future

One day it might be feasible that society creates a 'financial services licence',⁹ which must be held by any person wishing to engage with a reporting entity. The 'financial services licence' would provide the same level of identity data required by the AML/CTF rules to prove a customer's identity. It is acknowledged that this idea will have no current support but discussion of it must begin at some stage. Many will say this is just a reinvention of the 'Australia card' which was a controversial proposal for a national identification card for Australian citizens and resident foreigners. The Australia card proposal was made in 1985, and abandoned in 1987. At that time the internet and the electronic world were but vague shadows on a distant horizon. The electronic societies that we now live in and the relationship between technology and economic growth has created rights and freedoms which have gone unregulated and need correction.¹⁰ Reference is also made to KPMG's survey of this year, which revealed that just over 49 percent of the 317 respondents thought that electronic verification checks were making organizations further exposed to cybercrime. It appears that cybercrime concerns are reducing the use of automated online verification.¹¹ It might also be said that this reduction arises from customers wishing to avoid their e-history being examined.

Leaving cyber security aside, imagine if every person had to produce their financial services licence in order to:

- Open an account with an reporting entity
- Establish a relationship with a reporting entity
- Do a transaction with a reporting entity

⁹ Not to be confused with an Australian Financial Services Licence issued under the Corporations Law.

¹⁰ It took some 15 years before drivers' licences were required after the birth of the first official motor car in 1886.

¹¹ See KPMG 2014 report 'Global Anti Money Laundering Survey 2014' page 28.

- Send a transaction overseas
- Be a director of a company
- Be a beneficial owner of a company
- Act as a trustee
- Be a beneficiary of a trust
- Act as an office holder in an association, a cooperative or similar organisation
- Act as agent for another
- Hold a power of attorney.

Different licence periods could be used to manage different risks associated with persons such as overseas students, people on pensions, people with taxable incomes above certain thresholds, or engaged in certain businesses such as those dealing in cash. Aside from reducing the cost of the customer acceptance work of a reporting entity, the use of a financial services licence would bring people into the fight as partners against acquisitive crime.

AML Master's experience

AML Master works with all sizes of financial businesses, assisting them with their AML/CTF needs. The only business sector I have no involvement with is gambling because I choose not to. I refer such clients elsewhere.

In my work I have had exposure to:

- Six of the major reporters.
- Large and small wealth management businesses ranging from the mass market to the high net worth individual market.
- Large and small broking firms.
- Many small cash in transit businesses.
- Small and medium sized remitters and network providers, who may operate face to face or may operate only on-line.
- Offshore remitters.
- Small and medium sized FX businesses.

AML Master has supplied in excess of 80 programs into the market described above and currently the rate of new program requests are 1-2 per month. AML Master has also conducted a number of independent reviews across a diverse range of reporting entities.

Joy Geary
LLB, B.Comm (Melbourne University)
Director AML Master

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Numbers of pages

There are over 2,300 pages covering the AML/CTF regime as shown in the table below. This excludes any page changes arising from the 2014 CDD rules.

AML/CTF document	No. of pages
AML/CTF Act	345
AML/CTF rules	290
Regulations	
Statutory declarations	17
Autonomous Sanctions Regulations	50
Current regulations	11
Public Legal Interpretations	
Public Legal interpretation 1	4
Public Legal interpretation 2	11
Public Legal interpretation 4	19
Public Legal interpretation 5	31
Public Legal interpretation 6	18
Public Legal interpretation 7	16
Public Legal interpretation 8	16
Public Legal interpretation 9	14
Public Legal interpretation 10	10
Public Legal interpretation 11	40
Public Legal interpretation 12	18
2011 Risk Assessment	44
Guidance	
Opening an account	4
Correspondent banking	9
Designated business groups	7
Exemptions and modifications	7
Guidance on Iran	9
Remittance network providers	8
No action letters	5
AML/CTF compliance officers	5
Record-keeping	10
Bullion definition	4
Comparable AML/CTF laws	5
IFTI reporting	12
ID requirements TTRs	4
If known TTRs	2
Bank other than TTRs	3
E-verification	8
Remitters registration obligations	6
IFTI reporting II	9
Network providers	8
Remitters register	5
Risk management & AML/CTF programs	19

AML/CTF document	No. of pages
Regulatory Manual	290
Regulatory Plan	
Policies	
Education	5
Enforcement	13
English Translation	2
Exemptions and modifications	6
Intelligence strategy	16
Monitoring	7
Agency multi-cultural Plan	7
FATF 2012 International Standards	127
Compliance report Guidance	10
Independent remitter fact sheet	3
New enrolment requirements	2
AUSTRAC business profile form	87
Annual typology reports	
2007	70
2008	80
2009	68
2010	72
2011	65
2012	100
2013	84
Tools	
Remitters	66
Bookmakers	32
ML/TF risk assessment for small and medium sized businesses	11
Total number of pages	2326