Anti-Money Laundering and Counter-Terrorism Financing (Transitional Provisions and Consequential Amendments) Act 2006

No. 170, 2006

An Act to deal with transitional and consequential matters in connection with the *Anti-Money Laundering and Counter-Terrorism Financing Act 2006*, and for other purposes

Note: An electronic version of this Act is available in ComLaw (http://www.comlaw.gov.au/)

Contents

1 Short title 2
2 Commencement 2
3 Schedule(s) 5

Schedule 1—Amendments 7

Part 1—Amendments 7

Administrative Decisions (Judicial Review) Act 1977 7
Anti-Terrorism Act (No. 2) 2005 7
Australian Securities and Investments Commission Act 2001 9
Commonwealth Electoral Act 1918 10
Corporations Act 2001 11
Crimes Act 1914 12
Criminal Code Act 1995 12
Financial Management and Accountability Regulations 1997 16
Financial Transaction Reports Act 1988 16
Financial Transaction Reports Amendment Act 2006 29
Freedom of Information Act 1982 29
Inspector-General of Intelligence and Security Act 1986 29
Law Enforcement Integrity Commissioner Act 2006 30
Privacy Act 1988 30
Proceeds of Crime Act 2002 31
Surveillance Devices Act 2004 33

Part 2—Transitional provisions 34

Anti-Money Laundering and Counter-Terrorism Financing (Transitional Provisions and Consequential Amendments) Act 2006

No. 170, 2006

An Act to deal with transitional and consequential matters in connection with the *Anti-Money Laundering and Counter-Terrorism Financing Act 2006*, and for other purposes

[*Assented to 12 December 2006*]

The Parliament of Australia enacts:

1 Short title

This Act may be cited as the *Anti-Money Laundering and Counter-Terrorism Financing (Transitional Provisions and Consequential Amendments) Act 2006*.

2 Commencement

(1) Each provision of this Act specified in column 1 of the table commences, or is taken to have commenced, in accordance with column 2 of the table. Any other statement in column 2 has effect according to its terms.

Commencement information

Column 1	**Column 2**	**Column 3**
Provision(s)	**Commencement**	**Date/Details**
1. Sections 1 to 3 and anything in this Act not elsewhere covered by this table	The day on which this Act receives the Royal Assent.	12 December 2006
2. Schedule 1, item 1	At the same time as section 3 of the *Anti-Money Laundering and Counter-Terrorism Financing Act 2006* commences.	13 December 2006
3. Schedule 1, items 2 to 11	Immediately after the commencement of section 2 of the *Anti-Terrorism Act (No. 2) 2005*.	14 December 2005
4. Schedule 1, items 12 to 57	At the same time as section 3 of the *Anti-Money Laundering and Counter-Terrorism Financing Act 2006* commences.	13 December 2006
5. Schedule 1, item 58	At the same time as section 3 of the *Anti-Money Laundering and Counter-Terrorism Financing Act 2006* commences. However, if that section commences before 14 December 2006, the provision(s) do not commence at all.	Does not commence
6. Schedule 1, items 59 to 78	At the same time as section 3 of the *Anti-Money Laundering and*	13 December 2006

Commencement information		
Column 1	**Column 2**	**Column 3**
Provision(s)	**Commencement**	**Date/Details**
	Counter-Terrorism Financing Act 2006 commences.	
7. Schedule 1, item 79	At the same time as section 3 of the *Anti-Money Laundering and Counter-Terrorism Financing Act 2006* commences. However, if that section commences before 14 December 2006, the provision(s) do not commence at all.	Does not commence
8. Schedule 1, items 80 to 89	At the same time as section 3 of the *Anti-Money Laundering and Counter-Terrorism Financing Act 2006* commences.	13 December 2006
9. Schedule 1, items 90 to 92	At the same time as section 3 of the *Anti-Money Laundering and Counter-Terrorism Financing Act 2006* commences. However, if that section commences before 14 December 2006, the provision(s) do not commence at all.	Does not commence
10. Schedule 1, items 93 to 112	At the same time as section 3 of the *Anti-Money Laundering and Counter-Terrorism Financing Act 2006* commences.	13 December 2006
11. Schedule 1, item 113	At the same time as section 3 of the *Anti-Money Laundering and Counter-Terrorism Financing Act 2006* commences. However, if that section commences before 14 December 2006, the provision(s) do not commence at all.	Does not commence
12. Schedule 1, items 114 to 119	At the same time as section 3 of the *Anti-Money Laundering and Counter-Terrorism Financing Act 2006* commences.	13 December 2006
13. Schedule 1, item 120	At the same time as section 3 of the *Anti-Money Laundering and*	Does not commence

Commencement information		
Column 1	**Column 2**	**Column 3**
Provision(s)	**Commencement**	**Date/Details**
	Counter-Terrorism Financing Act 2006 commences. However, if that section commences before 14 December 2006, the provision(s) do not commence at all.	
14. Schedule 1, item 121	At the same time as section 3 of the *Anti-Money Laundering and Counter-Terrorism Financing Act 2006* commences.	13 December 2006
15. Schedule 1, item 122	At the same time as section 3 of the *Anti-Money Laundering and Counter-Terrorism Financing Act 2006* commences. However, if that section commences before 14 December 2006, the provision(s) do not commence at all.	Does not commence
16. Schedule 1, item 123	At the same time as section 3 of the *Anti-Money Laundering and Counter-Terrorism Financing Act 2006* commences.	13 December 2006
17. Schedule 1, item 124	At the same time as section 3 of the *Anti-Money Laundering and Counter-Terrorism Financing Act 2006* commences. However, if that section commences before 14 December 2006, the provision(s) do not commence at all.	Does not commence
18. Schedule 1, items 125 to 128	At the same time as section 3 of the *Anti-Money Laundering and Counter-Terrorism Financing Act 2006* commences.	13 December 2006
19. Schedule 1, items 129 and 130	At the same time as section 3 of the *Anti-Money Laundering and Counter-Terrorism Financing Act 2006* commences. However, if that section commences before 14 December 2006, the provision(s) do not	Does not commence

Commencement information		
Column 1	**Column 2**	**Column 3**
Provision(s)	**Commencement**	**Date/Details**
	commence at all.	
20. Schedule 1, items 131 to 146	At the same time as section 3 of the *Anti-Money Laundering and Counter-Terrorism Financing Act 2006* commences.	13 December 2006
21. Schedule 1, item 147	Immediately after the commencement of section 2 of the *Financial Transaction Reports Amendment Act 2006*.	9 November 2006
22. Schedule 1, items 148 to 150	At the same time as section 3 of the *Anti-Money Laundering and Counter-Terrorism Financing Act 2006* commences.	13 December 2006
23. Schedule 1, item 151	The later of: (a) at the same time as section 3 of the *Anti-Money Laundering and Counter-Terrorism Financing Act 2006* commences; and (b) immediately after the commencement of section 5 of the *Law Enforcement Integrity Commissioner Act 2006*.	
24. Schedule 1, items 152 to 165	At the same time as section 3 of the *Anti-Money Laundering and Counter-Terrorism Financing Act 2006* commences.	13 December 2006

Note: This table relates only to the provisions of this Act as originally passed by both Houses of the Parliament and assented to. It will not be expanded to deal with provisions inserted in this Act after assent.

(2) Column 3 of the table contains additional information that is not part of this Act. Information in this column may be added to or edited in any published version of this Act.

3 Schedule(s)

(1) Each Act, and each set of regulations, that is specified in a Schedule to this Act is amended or repealed as set out in the applicable items in the Schedule concerned, and any other item in a Schedule to this Act has effect according to its terms.

(2) The amendment of any regulation under subsection (1) does not prevent the regulation, as so amended, from being amended or repealed by the Governor-General.

Schedule 1—Amendments

Part 1—Amendments

Administrative Decisions (Judicial Review) Act 1977

1 After paragraph (q) of Schedule 1

Insert:

(qa) decisions under the *Anti-Money Laundering and Counter-Terrorism Financing Act 2006*;

Anti-Terrorism Act (No. 2) 2005

2 Subsection 2(1) (cell at table item 8, column 2)

Repeal the cell, substitute:

14 December 2006.

However, if section 3 of the *Anti-Money Laundering and Counter-Terrorism Financing Act 2006* commences before 14 December 2006, the provision(s) do not commence at all.

3 Subsection 2(1) (cell at table item 10, column 2)

Repeal the cell, substitute:

14 December 2006.

However, if section 3 of the *Anti-Money Laundering and Counter-Terrorism Financing Act 2006* commences before 14 December 2006, the provision(s) do not commence at all.

4 Subsection 2(1) (cell at table item 11, column 2)

Repeal the cell, substitute:

14 December 2006.

However, if section 3 of the *Anti-Money Laundering and Counter-Terrorism Financing Act 2006* commences before 14 December 2006, the provision(s) do not commence at all.

5 Subsection 2(1) (cell at table item 13, column 2)

Repeal the cell, substitute:

14 December 2006.

However, if section 3 of the *Anti-Money Laundering and Counter-Terrorism Financing Act 2006* commences before 14 December 2006, the provision(s) do not commence at all.

6 Subsection 2(1) (cell at table item 14, column 2)

Repeal the cell, substitute:

14 December 2006.

However, if section 3 of the *Anti-Money Laundering and Counter-Terrorism Financing Act 2006* commences before 14 December 2006, the provision(s) do not commence at all.

7 Subsection 2(1) (cell at table item 15, column 2)

Repeal the cell, substitute:

14 December 2006.

However, if section 3 of the *Anti-Money Laundering and Counter-Terrorism Financing Act 2006* commences before 14 December 2006, the provision(s) do not commence at all.

8 Subsection 2(1) (cell at table item 16, column 2)

Repeal the cell, substitute:

	14 December 2006. However, if section 3 of the *Anti-Money Laundering and Counter-Terrorism Financing Act 2006* commences before 14 December 2006, the provision(s) do not commence at all.

9 Subsection 2(1) (cell at table item 17, column 2)

Repeal the cell, substitute:

	14 December 2006. However, if section 3 of the *Anti-Money Laundering and Counter-Terrorism Financing Act 2006* commences before 14 December 2006, the provision(s) do not commence at all.

10 Subsection 2(1) (cell at table item 18, column 2)

Repeal the cell, substitute:

	14 December 2006. However, if section 3 of the *Anti-Money Laundering and Counter-Terrorism Financing Act 2006* commences before 14 December 2006, the provision(s) do not commence at all.

11 Subsection 2(1) (cell at table item 19, column 2)

Repeal the cell, substitute:

	14 December 2006. However, if section 3 of the *Anti-Money Laundering and Counter-Terrorism Financing Act 2006* commences before 14 December 2006, the provision(s) do not commence at all.

Australian Securities and Investments Commission Act 2001

12 After section 243D

Insert:

243E Suspicious matters reports under the *Anti-Money Laundering and Counter-Terrorism Financing Act 2006*

Section 123 of the *Anti-Money Laundering and Counter-Terrorism Financing Act 2006* does not prohibit a person from disclosing a fact or information referred to in that section:

(a) to ASIC; or

(b) to a market licensee; or

(c) to a CS facility licensee; or

(d) to an operator of a market exempted under section 791C of the Corporations Act; or

(e) to an operator of a clearing and settlement facility exempted under section 820C of the Corporations Act; or

(f) in accordance with conditions imposed on an Australian market licence under section 796A of the Corporations Act; or

(g) in accordance with conditions imposed on an Australian CS facility licence under section 825A of the Corporations Act; or

(h) in accordance with conditions on an exemption made under section 791C of the Corporations Act from the requirement to hold an Australian market licence; or

(i) in accordance with conditions on an exemption made under section 820C of the Corporations Act from the requirement to hold an Australian CS facility licence; or

(j) as prescribed by regulations made for the purposes of this paragraph.

Commonwealth Electoral Act 1918

13 Subsection 90B(4) (at the end of the table)

Add:

6	a prescribed person or organisation that: (a) is a reporting entity or an agent of a reporting entity; and (b) carries out applicable customer	a copy of a Roll (or an extract of a Roll)	(a) on request by the person or organisation; and (b) on payment of the fee (if any) payable under subsection (9).

identification procedures under the *Anti-Money Laundering and Counter-Terrorism Financing Act 2006*

14 Subsection 90B(10)

Insert:

applicable customer identification procedure has the same meaning as in the *Anti-Money Laundering and Counter-Terrorism Financing Act 2006*.

15 Subsection 90B(10)

Insert:

reporting entity has the same meaning as in the *Anti-Money Laundering and Counter-Terrorism Financing Act 2006*.

16 After subsection 91A(2C)

Insert:

(2D) For information provided under item 6 of the table in subsection 90B(4), the only permitted purpose in relation to a prescribed person or organisation is for the person or organisation to carry out an applicable customer identification procedure under the *Anti-Money Laundering and Counter-Terrorism Financing Act 2006*.

17 Subsection 91A(3)

Insert:

applicable customer identification procedure has the same meaning as in the *Anti-Money Laundering and Counter-Terrorism Financing Act 2006*.

Corporations Act 2001

18 Paragraph 766B(3)(a)

After “needs”, insert “(otherwise than for the purposes of compliance with the *Anti-Money Laundering and Counter-Terrorism Financing Act 2006* or with regulations, or AML/CTF Rules, under that Act)”.

Crimes Act 1914

19 Section 85ZL

Insert:

AUSTRAC means the Australian Transaction Reports and Analysis Centre continued in existence by the *Anti-Money Laundering and Counter-Terrorism Financing Act 2006*.

20 Paragraph 85ZZH(h)

Repeal the paragraph, substitute:

(h) AUSTRAC, for the purpose of assessing:

(i) prospective members of the staff of AUSTRAC; or

(ii) persons proposed to be engaged as consultants under subsection 225(1) of the *Anti-Money Laundering and Counter-Terrorism Financing Act 2006*; or

(iii) persons whose services are proposed to be made available to AUSTRAC under subsection 225(3) of that Act;

Criminal Code Act 1995

21 Subsection 400.1(1) of the *Criminal Code*

Insert:

Australian Capital Territory indictable offence means an offence against a law of the Australian Capital Territory that may be dealt with as an indictable offence (even if it may, in some circumstances, be dealt with as a summary offence).

22 Subsection 400.1(1) of the *Criminal Code*

Insert:

banking transaction includes:

(a) any transaction made at an ADI; and

(b) any transaction involving a money order.

23 Subsection 400.1(1) of the *Criminal Code*

Insert:

Commonwealth indictable offence means an offence against a law of the Commonwealth, or a law of a Territory (other than the Australian Capital Territory and the Northern Territory), that may be dealt with as an indictable offence (even if it may, in some circumstances, be dealt with as a summary offence).

24 Subsection 400.1(1) of the *Criminal Code*

Insert:

export money or other property, from Australia, includes transfer money or other property from Australia by an electronic communication.

25 Subsection 400.1(1) of the *Criminal Code*

Insert:

foreign indictable offence means an offence against a law of a foreign country constituted by conduct that, if it had occurred in Australia, would have constituted an offence against:

(a) a law of the Commonwealth; or

(b) a law of a State or Territory connected with the offence;

that may be dealt with as an indictable offence (even if it may, in some circumstances, be dealt with as a summary offence).

Note: See subsection (3) for when a law of a State or Territory is connected with the offence.

26 Subsection 400.1(1) of the *Criminal Code*

Insert:

import money or other property, into Australia, includes transfer money or other property to Australia by an electronic communication.

27 Subsection 400.1(1) of the *Criminal Code*

Insert:

Northern Territory indictable offence means an offence against a law of the Northern Territory that may be dealt with as an

indictable offence (even if it may, in some circumstances, be dealt with as a summary offence).

28 Subsection 400.1(1) of the *Criminal Code*

Insert:

State indictable offence means an offence against a law of a State that may be dealt with as an indictable offence (even if it may, in some circumstances, be dealt with as a summary offence).

29 At the end of section 400.1 of the *Criminal Code*

Add:

(3) For the purposes of the definition of ***foreign indictable offence*** in subsection (1), a State or Territory is connected with the offence if:

(a) a dealing in money or property takes place in the State or Territory; and

(b) the money or property would be proceeds of crime, or could become an instrument of crime, in relation to the offence if the offence were a foreign indictable offence.

30 Paragraph 400.2(1)(b) of the *Criminal Code*

Repeal the paragraph, substitute:

(b) the money or other property is proceeds of crime, or could become an instrument of crime, in relation to an offence that is:

(i) a Commonwealth indictable offence; or

(ii) a foreign indictable offence; or

(iii) a State indictable offence; or

(iv) an Australian Capital Territory indictable offence; or

(v) a Northern Territory indictable offence.

31 Subsections 400.2(3) and (4) of the *Criminal Code*

Repeal the subsections, substitute:

(3) Subparagraph (1)(b)(iii), in its application to a particular offence against this Division, has effect only to the extent to which it is a law with respect to external affairs (within the meaning of paragraph 51(xxix) of the Constitution).

32 Paragraph 400.9(1)(b) of the *Criminal Code*

Omit “either or both”, substitute “any”.

33 After subparagraph 400.9(1)(b)(i) of the *Criminal Code*

Insert:

(ia) the money or property is proceeds of crime in relation to a State indictable offence;

(ib) the money or property is proceeds of crime in relation to an Australian Capital Territory indictable offence or a Northern Territory indictable offence;

34 After paragraph 400.9(2)(a) of the *Criminal Code*

Insert:

(aa) the conduct involves a number of transactions that are structured or arranged to avoid the reporting requirements of the *Anti-Money Laundering and Counter-Terrorism Financing Act 2006* that would otherwise apply to the transactions; or

35 After paragraph 400.9(2)(b) of the *Criminal Code*

Insert:

(ba) the conduct amounts to an offence against section 139, 140 or 141 of the *Anti-Money Laundering and Counter-Terrorism Financing Act 2006*; or

36 After paragraph 400.9(2)(d) of the *Criminal Code*

Insert:

(da) the conduct involves a threshold transaction (within the meaning of the *Anti-Money Laundering and Counter-Terrorism Financing Act 2006*) and the defendant:

(i) has contravened the defendant’s obligations under that Act relating to reporting the transaction; or

(ii) has given false or misleading information in purported compliance with those obligations; or

37 At the end of section 400.9 of the *Criminal Code*

Add:

(6) Subparagraph (1)(b)(ia), in its application to an offence against subsection (1), has effect only to the extent to which it is a law with respect to external affairs (within the meaning of paragraph 51 (xxix) of the Constitution).

38 At the end of section 400.11 of the *Criminal Code*

Add:

; (e) whether an offence is a State indictable offence;

(f) whether an offence is an Australian Capital Territory indictable offence;

(g) whether an offence is a Northern Territory indictable offence.

Financial Management and Accountability Regulations 1997

39 Part 1 of Schedule 1 (table item 104)

Repeal the item, substitute:

104	Australian Transaction Reports and Analysis Centre (***AUSTRAC***), comprising: (a) the Chief Executive Officer of AUSTRAC; and (b) the staff mentioned in section 224 of the *Anti-Money Laundering and Counter-Terrorism Financing Act 2006*; and (c) consultants engaged under subsection 225(1) of that Act; and (d) the persons whose services are made available to the Chief Executive Officer of AUSTRAC under subsection 225(3) of that Act. *See Note B*	Chief Executive Officer

Financial Transaction Reports Act 1988

40 Title

Omit "**, to establish an Australian Transaction Reports and Analysis Centre**".

41 Subsection 3(1) (definition of *approved*)

Omit "Director", substitute "AUSTRAC CEO".

42 Subsection 3(1) (definition of *approved cash carrier*)

Omit "Director", substitute "AUSTRAC CEO".

43 Subsection 3(1) (definition of *APRA officer*)

Repeal the definition.

44 Subsection 3(1) (definition of *AUSTRAC*)

Repeal the definition, substitute:

> ***AUSTRAC*** means the Australian Transaction Reports and Analysis Centre continued in existence by the *Anti-Money Laundering and Counter-Terrorism Financing Act 2006*.

45 Subsection 3(1)

Insert:

> ***AUSTRAC CEO*** means the Chief Executive Officer of AUSTRAC.

46 Subsection 3(1) (definition of *Centrelink officer*)

Repeal the definition.

47 Subsection 3(1) (definition of *Child Support Agency*)

Repeal the definition.

48 Subsection 3(1)

Insert:

> ***commence to provide a designated service*** has the same meaning as in the *Anti-Money Laundering and Counter-Terrorism Financing Act 2006*.

49 Subsection 3(1) (definition of *CSA officer*)

Repeal the definition.

50 Subsection 3(1)

Insert:

> ***designated service*** has the same meaning as in the *Anti-Money Laundering and Counter-Terrorism Financing Act 2006*.

51 Subsection 3(1)

Insert:

designated service transaction: if:

(a) a reporting entity provides, or commences to provide, a designated service to a customer (within the meaning of the *Anti-Money Laundering and Counter-Terrorism Financing Act 2006*); and

(b) the provision of the service involves a transaction;

the transaction is a ***designated service transaction***.

52 Subsection 3(1) (definition of *Director*)

Repeal the definition.

53 Subsection 3(1) (definition of *FTR information*)

Omit "Director", substitute "AUSTRAC CEO".

54 Subsection 3(1) (definition of *Inter-Governmental Committee*)

Repeal the definition.

55 Subsection 3(1) (definition of *member of the staff of the Police Integrity Commission*)

Repeal the definition.

56 Subsection 3(1) (at the end of the definition of *non-reportable cash transaction*)

Add:

; and (c) that is not a designated service transaction.

57 Subsection 3(1) (definition of *Police Integrity Commission*)

Repeal the definition.

58 Subsection 3(1) (definition of *prescribed particulars*)

Repeal the definition.

59 Subsection 3(1)

Insert:

reporting entity has the same meaning as in the *Anti-Money Laundering and Counter-Terrorism Financing Act 2006*.

60 Subsection 3(1) (definition of *Royal Commission*)

Repeal the definition.

61 Subsection 3(1) (definition of *Royal Commission into the New South Wales Police Service*)

Repeal the definition.

62 Paragraph 7(1)(b)

Omit "Director", substitute "AUSTRAC CEO".

63 At the end of subsection 7(1)

Add:

; or (f) all of the following conditions are satisfied:

(i) the cash dealer is a reporting entity;

(ii) the transaction occurred after the commencement of Division 1 of Part 2 of the *Anti-Money Laundering and Counter-Terrorism Financing Act 2006*;

(iii) the transaction is a designated service transaction.

64 Subsections 7(2) and (3)

Omit "Director" (wherever occurring), substitute "AUSTRAC CEO".

65 Subsection 8(1)

Omit "Director" (wherever occurring), substitute "AUSTRAC CEO".

66 Subsections 8A(1), (2), (4), (5) and (7)

Omit "Director" (wherever occurring), substitute "AUSTRAC CEO".

67 Subsection 9(2)

Omit "Director", substitute "AUSTRAC CEO".

68 After subsection 11(2)

Insert:

(2A) Despite subsections (1) and (2), a financial institution must not enter a designated service transaction, or a class of designated

service transactions, in its exemption register after the commencement of Division 1 of Part 3 of the *Anti-Money Laundering and Counter-Terrorism Financing Act 2006*.

69 Subsections 11(3) and (4)

Omit "Director", substitute "AUSTRAC CEO".

70 Subsections 13(1), (2), (5) and (6)

Omit "Director" (wherever occurring), substitute "AUSTRAC CEO".

Note: The heading to section 13 is altered by omitting "**Director**" and substituting "**AUSTRAC CEO**".

71 After subsection 15(1A)

Insert:

(1B) Subsection (1) does not apply if the transfer occurred after the commencement of Division 1 of Part 4 of the *Anti-Money Laundering and Counter-Terrorism Financing Act 2006*.

Note: A defendant bears an evidential burden in relation to the matter in subsection (1B) (see subsection 13.3(3) of the *Criminal Code*).

72 After subsection 15(5A)

Insert:

(5B) Subsection (5) does not apply if the currency was transferred after the commencement of Division 1 of Part 4 of the *Anti-Money Laundering and Counter-Terrorism Financing Act 2006*.

Note: A defendant bears an evidential burden in relation to the matter in subsection (5B) (see subsection 13.3(3) of the *Criminal Code*).

73 Subparagraph 15(7)(d)(ii)

Omit "Director", substitute "AUSTRAC CEO".

74 Subsection 15(8)

Omit "Director", substitute "AUSTRAC CEO".

75 Subsection 15A(1)

Omit "If a", substitute "Subject to subsection (3A), if a".

76 Paragraph 15A(1)(b)

Omit “Director”, substitute “AUSTRAC CEO”.

77 Subsection 15A(3)

Omit “Director” (wherever occurring), substitute “AUSTRAC CEO”.

78 After subsection 15A(3)

Insert:

(3A) Subsection (1) does not impose any obligations on a solicitor, a solicitor corporation, or a partnership of solicitors, in relation to a transaction if:

(a) the solicitor, corporation or partnership is a reporting entity; and

(b) the transaction occurred after the commencement of Division 1 of Part 3 of the *Anti-Money Laundering and Counter-Terrorism Financing Act 2006*; and

(c) the transaction is a designated service transaction.

79 Subsections 15AA(1) and (5)

Omit “Director”, substitute “AUSTRAC CEO”.

80 Subsection 16(1)

Omit “Where”, substitute “Subject to subsection (4A), where”.

81 Paragraph 16(1)(d)

Omit “Director”, substitute “AUSTRAC CEO”.

82 Subsection 16(1A)

Omit “Where”, substitute “Subject to subsection (4A), where”.

83 Paragraph 16(1A)(d)

Omit “Director”, substitute “AUSTRAC CEO”.

84 Subsections 16(3) and (4)

Omit “Director” (wherever occurring), substitute “AUSTRAC CEO”.

85 After subsection 16(4)

Insert:

(4A) Subsections (1) and (1A) do not impose any obligations on a cash dealer in relation to a transaction if:

(a) the cash dealer is a reporting entity; and

(b) the transaction occurs after the commencement of Division 1 of Part 3 of the *Anti-Money Laundering and Counter-Terrorism Financing Act 2006*; and

(c) the transaction is a designated service transaction.

86 Subsection 16(5A)

Omit "Director" (wherever occurring), substitute "AUSTRAC CEO".

87 Subparagraph 16(5D)(b)(ii)

Omit "Director", substitute "AUSTRAC CEO".

88 Paragraph 17B(1)(a)

Before "a cash dealer", insert "before the commencement of Division 1 of Part 3 of the *Anti-Money Laundering and Counter-Terrorism Financing Act 2006*,".

89 Subsections 17B(3) and (4)

Omit "Director", substitute "AUSTRAC CEO".

90 Paragraph 17FA(1)(a)

Before "an ADI", insert "before the commencement of Division 1 of Part 3 of the *Anti-Money Laundering and Counter-Terrorism Financing Act 2006*,".

91 Paragraph 17FB(1)(a)

Before "an ADI", insert "before the commencement of Division 1 of Part 3 of the *Anti-Money Laundering and Counter-Terrorism Financing Act 2006*,".

92 Subsections 17FB(2) and (4)

Omit "Director" (wherever occurring), substitute "AUSTRAC CEO".

93 Subsection 18(1)

Omit "This section applies", substitute "Subject to subsections (1A) and (1B), this section applies".

94 After subsection 18(1)

Insert:

(1A) Subparagraphs (1)(a)(i) and (b)(i) do not apply if the account is opened after the commencement of Division 1 of Part 2 of the *Anti-Money Laundering and Counter-Terrorism Financing Act 2006* in circumstances that amount to the provision of a designated service.

(1B) Subparagraphs (1)(a)(ii) and (b)(ii) do not apply if:

(a) the person becomes a signatory of the account after the commencement of Division 1 of Part 2 of the *Anti-Money Laundering and Counter-Terrorism Financing Act 2006*; and

(b) either:

(i) the account is opened after the commencement of Division 1 of Part 2 of the *Anti-Money Laundering and Counter-Terrorism Financing Act 2006* in circumstances that amount to the provision of a designated service; or

(ii) the account was opened before the commencement of that Division in circumstances that would have amounted to the provision of a designated service if all the provisions of Parts 1 and 2 of that Act had been in force at the relevant time.

95 Subsections 18(2), (2A), (8) and (8A)

Omit “Director”, substitute “AUSTRAC CEO”.

96 Subsections 19(1), (2), (3) and (4)

Omit “Director” (wherever occurring), substitute “AUSTRAC CEO”.

97 Subsection 19(5)

Omit “Director’s”, substitute “AUSTRAC CEO’s”.

98 Paragraphs 20(1)(a) and (b)

After “cash dealer”, insert “for the purposes of compliance with this Part”.

99 Subparagraph 20A(1)(b)(ii)

Omit “Director”, substitute “AUSTRAC CEO”.

100 Subsection 21A(1)

Omit "This section applies", substitute "Subject to subsections (1A) and (1B), this section applies".

101 After subsection 21A(1)

Insert:

(1A) This section does not apply to an individual who wishes to open an account if the account is opened after the commencement of Division 1 of Part 2 of the *Anti-Money Laundering and Counter-Terrorism Financing Act 2006* in circumstances that amount to the provision of a designated service.

(1B) This section does not apply to an individual who wishes to become a signatory to an account with an identifying cash dealer in a name by which the individual intends to be commonly known if:

(a) the individual wishes to become a signatory to the account in that name after the commencement of Division 1 of Part 2 of the *Anti-Money Laundering and Counter-Terrorism Financing Act 2006*; and

(b) either:

(i) the account is opened after the commencement of Division 1 of Part 2 of the *Anti-Money Laundering and Counter-Terrorism Financing Act 2006* in circumstances that amount to the provision of a designated service; or

(ii) the account was opened before the commencement of that Division in circumstances that would have amounted to the provision of a designated service if all the provisions of Parts 1 and 2 of that Act had been in force at the relevant time.

102 Subsection 22(1)

After "given to a cash dealer", insert "for the purposes of compliance with this Part".

103 Subsection 22(1)

Omit "Director", substitute "AUSTRAC CEO".

Note: The heading to section 22 is altered by omitting "**Director**" and substituting "**AUSTRAC CEO**".

104 Subsection 23(1)

After “signatory information”, insert “for the purpose of compliance with this Part”.

105 Subparagraph 23A(6)(c)(ii)

Omit “Director”, substitute “AUSTRAC CEO”.

106 Subparagraph 23B(5)(c)(ii)

Omit “Director”, substitute “AUSTRAC CEO”.

107 Subsection 24(5)

Omit “Director” (wherever occurring), substitute “AUSTRAC CEO”.

108 At the end of section 24

Add:

(9) This section does not apply in relation to the opening of an account if the account is opened after the commencement of Division 1 of Part 2 of the *Anti-Money Laundering and Counter-Terrorism Financing Act 2006* in circumstances that amount to the provision of a designated service.

(10) This section does not apply in relation to the operation of an account after the commencement of Division 1 of Part 2 of the *Anti-Money Laundering and Counter-Terrorism Financing Act 2006* if:

(a) the account was opened in circumstances that amount to the provision of a designated service; or

(b) allowing a transaction in relation to the account would amount to the provision of a designated service.

109 Section 24B

Omit “Director”, substitute “AUSTRAC CEO”.

110 Subsection 24C(1)

After “must not”, insert “, before the commencement of Division 1 of Part 2 of the *Anti-Money Laundering and Counter-Terrorism Financing Act 2006*,”.

111 Paragraph 24C(2)(b)

Omit “Director”, substitute “AUSTRAC CEO”.

112 Subsection 24D(1)

After “bullion transaction”, insert “that occurred before the commencement of Division 1 of Part 2 of the *Anti-Money Laundering and Counter-Terrorism Financing Act 2006*”.

113 Part IIIB

Repeal the Part.

114 Part IV

Repeal the Part.

115 Section 27A

Omit “Director”, substitute “AUSTRAC CEO”.

116 Subsections 27B(1) and (2)

Omit “Director” (wherever occurring), substitute “AUSTRAC CEO”.

117 Subparagraph 27C(2)(d)(ii)

Omit “Director”, substitute “AUSTRAC CEO”.

118 Subparagraph 27D(2)(d)(ii)

Omit “Director”, substitute “AUSTRAC CEO”.

119 Subsection 27E(1)

Omit “Director”, substitute “AUSTRAC CEO”.

120 Paragraph 28(1)(a)

Omit “Director”, substitute “AUSTRAC CEO”.

121 Paragraph 28(3)(a)

Omit “Director”, substitute “AUSTRAC CEO”.

122 Subsection 29(1)

Omit “Director”, substitute “AUSTRAC CEO”.

123 Subsection 29(2A)

Omit “Director”, substitute “AUSTRAC CEO”.

124 Subsection 30(1)

Omit “Director”, substitute “AUSTRAC CEO”.

125 Subsection 30(3)

Omit “Director”, substitute “AUSTRAC CEO”.

126 Subsection 32(1)

Omit “Director”, substitute “AUSTRAC CEO”.

127 Subsection 33(1)

After “leave Australia”, insert “before the commencement of Division 1 of Part 4 of the *Anti-Money Laundering and Counter-Terrorism Financing Act 2006*”.

128 Subsection 33(2)

After “arrives in Australia”, insert “before the commencement of Division 1 of Part 4 of the *Anti-Money Laundering and Counter-Terrorism Financing Act 2006*”.

129 Subsection 33AA(1)

After “leave Australia”, insert “before the commencement of Division 1 of Part 4 of the *Anti-Money Laundering and Counter-Terrorism Financing Act 2006*”.

130 Subsection 33AA(2)

After “arrives in Australia”, insert “before the commencement of Division 1 of Part 4 of the *Anti-Money Laundering and Counter-Terrorism Financing Act 2006*”.

131 Sections 35, 36, 36A, 36B and 37

Repeal the sections.

132 Subsection 38(1)

Omit “Director are” substitute “AUSTRAC CEO include”.

Note: The heading to section 38 is altered by omitting “**Director**” and substituting “**AUSTRAC CEO**”.

133 Paragraphs 38(1)(a) and (ab)

Repeal the paragraphs.

134 At the end of paragraphs 38(1)(b) and (c)

Add “and”.

135 Subsection 38(2)

Omit “Director’s functions, the Director shall”, substitute “AUSTRAC CEO’s functions under this Act, the AUSTRAC CEO must”.

136 Paragraph 38(2)(a)

Omit “Director’s functions”, substitute “AUSTRAC CEO’s functions under this Act”.

137 Subsection 38(3)

Omit “Director’s functions, the Director shall”, substitute “AUSTRAC CEO’s functions under this Act, the AUSTRAC CEO must”.

138 Paragraph 38(3)(a)

Omit “Director”, substitute “AUSTRAC CEO”.

139 Paragraph 38(3)(d)

Omit “Director’s functions”, substitute “AUSTRAC CEO’s functions under this Act”.

140 Subsection 38(4)

Omit “Director’s functions, the Director shall”, substitute “AUSTRAC CEO’s functions under this Act, the AUSTRAC CEO must”.

141 At the end of section 38

Add:

(5) Any failure to comply with the requirements of subsection (2) in relation to the performance of a function of the AUSTRAC CEO does not affect the validity of the performance of the function.

142 Sections 39, 40, 40A and 40B

Repeal the sections.

143 Section 40C (definition of *financial transaction document*)

After “carried out”, insert “, before the commencement of Division 1 of Part 2 of the *Anti-Money Laundering and Counter-Terrorism Financing Act 2006*,”.

144 Section 40D (paragraph (a) of the definition of *customer-generated financial transaction document*)

After “following financial transactions”, insert “carried out before the commencement of Division 1 of Part 2 of the *Anti-Money Laundering and Counter-Terrorism Financing Act 2006*”.

145 Section 42

Omit “Director”, substitute “AUSTRAC CEO”.

146 Schedule 1

Omit “Director” (wherever occurring), substitute “AUSTRAC CEO”.

Financial Transaction Reports Amendment Act 2006

147 Subsection 2(1) (cell at table item 2, column 2)

Repeal the cell, substitute:

Immediately after the commencement of item 10 of Schedule 9 to the *Anti-Terrorism Act (No. 2) 2005*.	However, if section 3 of the *Anti-Money Laundering and Counter-Terrorism Financing Act 2006* commences before 14 December 2006, the provision(s) do not commence at all.

Freedom of Information Act 1982

148 Division 1 of Part II of Schedule 2 (at the end of the item dealing with the Australian Transaction Reports and Analysis Centre)

Add “or section 41 or 49 of the *Anti-Money Laundering and Counter-Terrorism Financing Act 2006*”.

Inspector-General of Intelligence and Security Act 1986

149 Subsection 22(3)

Repeal the subsection, substitute:

(3) If the report includes:

(a) information that was acquired by the Commissioner of Taxation under the provisions of a tax law (within the meaning of section 3E of the *Taxation Administration Act 1953*); or

(b) AUSTRAC information (within the meaning of the *Anti-Money Laundering and Counter-Terrorism Financing Act 2006*);

the Inspector-General must prepare another version of the report that does not disclose the information referred to in paragraph (a) or (b).

Note: Section 3EC of the *Taxation Administration Act 1953* permits the Inspector-General to disclose paragraph (a) information to the Director-General of Security in the report under subsection (1).

150 Section 25A (note)

Omit all the words after "tax information", substitute ", financial transaction reports information or AUSTRAC information as permitted under section 3EC of the *Taxation Administration Act 1953* or section 128 of the *Anti-Money Laundering and Counter-Terrorism Financing Act 2006*.".

Law Enforcement Integrity Commissioner Act 2006

151 Subsection 5(1) (paragraph (a) of the definition of *law enforcement secrecy provision*)

Repeal the paragraph, substitute:

(a) Part 11 of the *Anti-Money Laundering and Counter-Terrorism Financing Act 2006*; or

Privacy Act 1988

152 Before subsection 6E(1)

Insert:

Small business operator that is a reporting entity

(1A) If a small business operator is a reporting entity (within the meaning of the *Anti-Money Laundering and Counter-Terrorism Financing Act 2006*) because of anything done in the course of a small business carried on by the small business operator, this Act applies, with the prescribed modifications (if any), in relation to the activities carried on by the small business operator for the purpose of compliance with:

(a) the *Anti-Money Laundering and Counter-Terrorism Financing Act 2006*; or

(b) regulations or AML/CTF Rules under that Act;

as if the small business operator were an organisation.

Note: The regulations may prescribe different modifications of the Act for different small business operators. See subsection 33(3A) of the *Acts Interpretation Act 1901*.

Proceeds of Crime Act 2002

153 Subsection 29(3)

After "*Financial Transaction Reports Act 1988*", insert "or section 53, 59, 136, 137, 139, 140, 141, 142 or 143 of the *Anti-Money Laundering and Counter-Terrorism Financing Act 2006*".

154 Paragraph 223(4)(b)

Omit "Director" (wherever occurring), substitute "Chief Executive Officer".

155 At the end of Part 6-1

Add:

337B Definition of *serious offence*—valuation rules

In determining the value of a transaction or transactions for the purposes of paragraph (ea), (eb) or (ec) of the definition of ***serious offence*** in section 338 of this Act, apply the following provisions of the *Anti-Money Laundering and Counter-Terrorism Financing Act 2006:*

(a) the definition of ***value*** in section 5;

(b) section 18;

(c) section 19.

156 Section 338 (definition of *AUSTRAC*)

Repeal the definition, substitute:

> ***AUSTRAC*** means the Australian Transaction Reports and Analysis Centre continued in existence by the *Anti-Money Laundering and Counter-Terrorism Financing Act 2006*.

157 Section 338 (after paragraph (e) of the definition of *serious offence*)

Insert:

(ea) an offence against any of the following sections of the *Anti-Money Laundering and Counter-Terrorism Financing Act 2006* involving a transaction of at least $50,000 in value:

(i) section 53 (reports about movements of physical currency into or out of Australia);

(ii) section 59 (reports about movements of bearer negotiable instruments into or out of Australia);

(iii) section 136 (false or misleading information);

(iv) section 137 (false or misleading documents); or

(eb) an offence against any of the following sections of the *Anti-Money Laundering and Counter-Terrorism Financing Act 2006*:

(i) section 139 (providing a designated service using a false customer name or customer anonymity);

(ii) section 140 (receiving a designated service using a false customer name or customer anonymity);

(iii) section 141 (non-disclosure of other name by which customer is commonly known);

if:

(iv) the customer concerned had an account in relation to the provision of the designated service concerned; and

(v) transactions on the account total at least $50,000 in value during any 6 month period beginning after the commencement of Part 12 of that Act; or

(ec) an offence against either of the following sections of the *Anti-Money Laundering and Counter-Terrorism Financing Act 2006*:

(i) section 142 (conducting transactions so as to avoid reporting requirements relating to threshold transactions);

(ii) section 143 (conducting transfers so as to avoid reporting requirements relating to cross-border movements of physical currency);

if transactions in breach of that section by the person committing the offence total at least $50,000 in value during any 6 month period; or

Surveillance Devices Act 2004

158 Subsection 6(1) (after paragraph (c) of the definition of *relevant offence*)

Insert:

(ca) an offence against section 34, 53, 59, 139 or 140 of the *Anti-Money Laundering and Counter-Terrorism Financing Act 2006*; or

Part 2—Transitional provisions

159 Instrument of appointment—AUSTRAC CEO

(1) This item applies to an instrument of appointment that:

(a) was in force immediately before the commencement of this item; and

(b) was made under subsection 36(1) of the *Financial Transaction Reports Act 1988*.

(2) If the person who held office as Director of AUSTRAC immediately before the commencement of this item remains in office as the AUSTRAC CEO after the commencement of this item, the instrument has effect, after the commencement of this item, as if:

(a) it had been made under subsection 214(1) of the *Anti-Money Laundering and Counter-Terrorism Financing Act 2006*; and

(b) a reference in the instrument to the Director of AUSTRAC were a reference to the AUSTRAC CEO.

(3) This item does not limit section 25B of the *Acts Interpretation Act 1901*.

160 Terms and conditions of appointment—AUSTRAC CEO

(1) This item applies to an instrument that:

(a) was in force immediately before the commencement of this item; and

(b) was made under subsection 36(2) of the *Financial Transaction Reports Act 1988*.

(2) If the person who held office as Director of AUSTRAC immediately before the commencement of this item remains in office as the AUSTRAC CEO after the commencement of this item, the instrument (to the extent to which it deals with matters not covered by the *Anti-Money Laundering and Counter-Terrorism Financing Act 2006*) has effect, after the commencement of this item, as if:

(a) it had been made under section 220 of the *Anti-Money Laundering and Counter-Terrorism Financing Act 2006*; and

(b) a reference in the instrument to the Director of AUSTRAC were a reference to the AUSTRAC CEO.

(3) This item does not limit section 25B of the *Acts Interpretation Act 1901*.

161 Acting appointments

(1) This item applies to an instrument of appointment that:

(a) was in force immediately before the commencement of this item; and

(b) was made under subsection 37(1) of the *Financial Transaction Reports Act 1988*.

(2) The instrument has effect, after the commencement of this item, as if:

(a) it had been made under subsection 221(1) of the *Anti-Money Laundering and Counter-Terrorism Financing Act 2006*; and

(b) a reference in the instrument to the Director of AUSTRAC were a reference to the AUSTRAC CEO.

(3) This item does not limit section 25B of the *Acts Interpretation Act 1901*.

162 Leave—AUSTRAC CEO

(1) This item applies to an instrument that:

(a) was in force immediately before the commencement of this item; and

(b) was made under subsection 36B(2) of the *Financial Transaction Reports Act 1988*.

(2) If the person who held office as Director of AUSTRAC immediately before the commencement of this item remains in office as the AUSTRAC CEO after the commencement of this item, the instrument has effect, after the commencement of this item, as if:

(a) it had been made under subsection 216(2) of the *Anti-Money Laundering and Counter-Terrorism Financing Act 2006*; and

(b) a reference in the instrument to the Director of AUSTRAC were a reference to the AUSTRAC CEO.

(3) This item does not limit section 25B of the *Acts Interpretation Act 1901*.

163 Delegations

(1) This item applies to an instrument of delegation that:

(a) was in force immediately before the commencement of this item; and

(b) was made under section 39 of the *Financial Transaction Reports Act 1988*.

(2) The instrument has effect, after the commencement of this item, as if:

(a) it had been made under subsection 222(1) of the *Anti-Money Laundering and Counter-Terrorism Financing Act 2006*; and

(b) a reference in the instrument to the Director of AUSTRAC were a reference to the AUSTRAC CEO.

(3) This item does not limit section 25B of the *Acts Interpretation Act 1901*.

164 Consultants

(1) This item applies to an agreement or determination that:

(a) was in force immediately before the commencement of this item; and

(b) was made under subsection 40A(1) or (2) of the *Financial Transaction Reports Act 1988*.

(2) The agreement or determination has effect, after the commencement of this item, as if:

(a) it had been made under subsection 225(1) or (2), as the case requires, of the *Anti-Money Laundering and Counter-Terrorism Financing Act 2006*; and

(b) a reference in the agreement or determination to the Director of AUSTRAC were a reference to the AUSTRAC CEO.

(3) This item does not limit section 25B of the *Acts Interpretation Act 1901*.

165 Transitional regulations

The Governor-General may make regulations prescribing matters of a transitional nature relating to:

(a) the amendments made by this Act; or

(b) the enactment of this Act or the *Anti-Money Laundering and Counter-Terrorism Financing Act 2006*.

[*Minister's second reading speech made in—*
House of Representatives on 1 November 2006
Senate on 29 November 2006]

(161/06)