AUSTRAC Risk Assessment October 2019
- Australia's Mutual Banking Sector -

A Summary for AML and CTF Officers

The following information has been developed to help Mutual's understand the key takeaways and themes identified in the AUSTRAC report. It has been overlayed with our observations and serves to provide AML and CTF Officers with suggested next steps.

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Executive Summary – AUSTRAC Risk Assessment

Released: 30 October 2019

Brief Description: **The AUSTRAC Risk Assessment: Australia's Mutual Banking Sector Report** released on 30 October 2019 (**Report**), sets out AUSTRAC's findings arising from its review of money laundering/counter terrorism financing risk in the Mutual Sector.

In summary, the overall rating of medium was considered appropriate due to the assessed criminal threat environment (particularly money laundering but also terrorism financing), vulnerabilities (such as cash exposure, high level of non-face-to-face services delivery, high levels of outsourcing) and consequences (such as loss of revenue and capital from fraud, higher insurance premiums and reputational damage), faced by the Mutual Sector. AUSTRAC reported that its analysis of suspicious matter reports (**SMR**)s submitted by Mutuals indicated that serious criminals known to government intelligence agencies are transacting through the sector.[1] There is some evidence that entities who pose a high risk of terrorism financing may be turning to Mutuals after a period of transacting with other banks.[2]

Call to action

Mutual banks have been urged by AUSTRAC to take note of the Report. AUSTRAC expects Mutuals will use the assessment to refine their own risk assessments, risk mitigation strategies and compliance controls.[3]

In our experience, regulators do consider the response taken by entities which are impacted by any publications issued by the regulator. Mutual banks should therefore review the adequacy of their AML/CTF Programs, having regard to the outcomes of the Report. Evidence of this assessment and any subsequent actions taken should be held to ensure this work can be revisited, if the need arises in any future engagements with the regulator. It is noted AUSTRAC states in its Report "*The manner in which mutuals respond to the information in this report may be considered for future AUSTRAC compliance activities*."[4]

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Key Takeaways

The below summary highlights some of the key takeaways from the AUSTRAC Risk Assessment: Australia's Mutual Banking Sector Report (Report) which we suggest are particularly relevant or may be of interest to an AML/CTF Officer or other senior managers in charge of overseeing implementation of the AML/CTF Program for a Mutual. The summary highlights key points only and we recommend the Report is reviewed in its entirety.

AUSTRAC Findings	Ash St. Observations
Overall Rating ▪ The overall risk rating for the Mutual Sector is **medium**.	▪ AML/CTF Officers should consider the appropriateness and robustness of their AML/CTF Program having regard to the Report. In particular, the enterprise ML/TF risk assessment for Mutuals should be considered in the context of specific findings in the Report relating to ML/TF risks associated with customers, products, channels and jurisdiction. Any deviations from the AUSTRAC assessment may need to be considered to determine if they are justifiable and appropriate.
Predicate Offences ▪ 41% of SMRs indicated activity relating to **predicate offending** which were assessed as being **much more likely to relate to actual criminality** than other SMRs reviewed by AUSTRAC. The predicate offences Mutuals were most exposed to are stolen identity, frauds against individuals (such as fraud and scams), tax evasion and welfare fraud. ▪ In reviewing cyber-enabled fraud (such as scams, money mules and unauthorised card transactions), **many Mutuals engaged during the development of the Report were not aware that cyber enabled fraud was reportable** under the AML/CTF regime.[5]	▪ AML/CTF Officers should ensure AML/CTF Programs are linked to fraud investigations or financial crimes teams or other investigations relating to investigations of predicate offences such as fraud or tax evasion. ▪ AML/CTF Officers should ensure cyber-enabled fraud is captured in AML/CTF Programs
Suspicious Matter Reporting ▪ Several SMRs could not be categorised because the SMR itself contained insufficient information.[6]	▪ Adequate processes should be in place for completing SMRs. ▪ Consideration should be given to whether there are adequate QA processes over SMRs.

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AUSTRAC Findings	Ash St. Observations
Money Laundering ▪ The most common indicators of money laundering included: - structuring; - multiple cash deposits or withdrawals; - large cash deposits; and - rapid movement of funds.	▪ At a minimum, all transaction monitoring rules should be reviewed to ensure these types of indicators and others identified in the Report are appropriately captured in the transaction monitoring program.
Terrorism Financing ▪ Evidence of terrorism financing was identified through AUSTRAC's analysis as a result of displaced terrorism financers being exited from larger financial institutions. ▪ One of the key risk areas identified in the context of terrorism financing were mutual customers that are charities or customers who use their bank accounts to donate to purported charities.	▪ At a minimum, transaction monitoring programs should be reviewed to ensure there are sufficient rules in place to identify terrorism financing activity. ▪ The enterprise ML/TF risk assessment should be reviewed to consider whether the rating for specific customer types such as charities, needs to be revised. ▪ Mutuals are also encouraged by AUSTRAC to remain vigilant with respect to customer identification and ongoing customer due diligence procedures, including checking against watch lists and media monitoring.[7]
Customers ▪ AUSTRAC recommended heightened due diligence is applied to trust accounts as there is a higher risk with these types of accounts due to the increased ability to obscure the identity of the beneficial owners of funds relating to the account.[8] In addition accounts associated with powers of attorney or third party authorities increase the potential for anonymity and can carry higher ML/TF risk. ▪ AUSTRAC recommended all Mutuals with a bond to government employees and/or other customers that have a high level of political exposure, implement sensitive systems to monitor customer behaviour, identify questionable sources of funds, as well as processes to follow when legitimacy cannot be established.	▪ ML/TF risk identified in the Report concerning particular types of customers should be reviewed to ensure appropriate customer identification and ongoing customer due diligence processes are in place.

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AUSTRAC Findings	Ash St. Observations
▪ In relation to source of funds, there were particular findings in the Report relating to circumstances where there is a lack of visibility of depositors due to unknown third parties depositing moneys into accounts held by solicitors, accountants and financial planners, particularly where acting as agents under a formal arrangement or under a power of attorney or other authority.	
Third party remittance providers ▪ It was apparent from AUSTRAC consultations there are differing views in the sector about which entity is c the designated service provider in relation to remittances requested or received by members of Mutuals. AUSTRAC clarified under the AML/CTF Act, the designated service provider will be the entity that accepts the instruction to remit the funds or to make it available to the recipient. Depending on the exact nature of the agreement between the customer, the mutual and the third party, this could mean the third party or the mutual (or both) are designated service providers in respect of the remittance.	▪ Mutuals should (and are strongly encouraged by AUSTRAC to) review agreements with third party remittance partners to confirm their designated services assessment. ▪ It is good practice to keep a register of all designated services provided by a mutual.
National Payments Platform risk ▪ It was observed there is heighted risk associated with the National Payments Platform due to the immediate transfer of funds making it more difficult to screen transactions and freeze suspect transactions.[9]	▪ As the NPP is a new delivery channel, Mutuals who have adopted or are intending to adopt NPP should ensure an ML/TF risk assessment is performed on the channel. ▪ Appropriate evidence and records of this assessment should be held by the Mutual.
Consumer Data Right risk ▪ The implementation of the Consumer Data Right (Open Banking) was also viewed could change the ML/TF risk environment given it is likely to increase the complexity of the financial services market and limit individual Mutuals oversight of customer activities.[10]	▪ AUSTRAC suggests Mutuals should ensure they consider and prepare for the different risk environment that may be created by Open Banking before the implementation date. ▪ Appropriate evidence and records of this assessment should be held by the Mutual.

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AUSTRAC Findings	Ash St. Observations
Foreign Jurisdiction risk ▪ A Mutual's exposure to foreign jurisdiction risk will depend, to an extent, on the systems and controls used by their remittance partner.[11]	▪ Mutuals should assess the robustness of systems and controls over remittance partners to ensure this risk is adequately managed.

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Our Team

The Ash St. Governance, Compliance and Regulation Team (GCR) is a blended legal, compliance and governance practice that draws on the private practice and in-house experience of our Practice Director, Samantha Carroll and Special Counsel, Michelle Bradshaw. Their approach is to listen, understand and then provide our clients with quality advice informed by their experience of what works in the real world.

Consistent with the Ash St. approach, the GCR team leverage the complementary skill sets of our Corporate/M&A, Finance, Projects IT, IP, Real Property and Employment Legal Practices and Advisory Services to ensure that the right people are involved in our client's Governance, Compliance and Regulatory matters. This translates into achieving the best results and high quality outcomes, for our clients.

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About Ash St.

We are an integrated professional services firm providing legal, compliance and other advisory services to solve complex business problems.

Established in 2013, we were founded to offer clients "The New Way" in professional services – one of the first of its kind. With this foresight and the application of our respective disciplines, high capability talent and agile commercial models we ensure our clients' complex business problems are solved.

Our team of lawyers (many from top-tier law firms) have decades of experience in mergers & acquisitions; corporate and commercial law; governance, compliance and regulation; finance; IT; IP; real property; contracting; projects and employment law. Our firm's culture is based on providing clients with high value, technical (but pragmatic), advice.

Our global clients are based in Australia, United Kingdom, United States of America, Canada, Singapore, China and Hong Kong and include both public and private companies, start-ups through to mature entities. Our integrated advisory approach and commercial acumen is why they keep coming back to us.

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