

## ASPECTS OF AML/CTF COMPLIANCE – TRUSTS AND ESTATE LAWYERS

1. We are a sector of the legal industry under scrutiny.
2. We are called “enablers” internationally.<sup>1</sup>
3. That is offensive.
4. But, let’s be realistic.
5. That is what the international AML/CTF community thinks we are.
6. You are a lawyer.
7. You are treated as complicit.
8. And guilty.
9. And you must have written proof that you are not.
10. That is how AML/CTF works for lawyers.

### **1.1 Start now**

11. Preparing compliance for your first day of operation after 30 June 2026 will take you weeks of a principal’s time.
12. You are not getting a compliance programme or policy document in one hour, today.

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<sup>1</sup> HM Government, *Serious and Organised Crime Strategy* (Cm 9718, 2018) para 25, as instanced by: Dr Sarah Kebbell, *Anti-Money Laundering Compliance and the Legal Profession* (Routledge, Abingdon, 2022), p 5 fn 28.  
David Middleton & Michael Levi, "Let Sleeping Lawyers Lie: Organized Crime, Lawyers and the Regulation of Legal Services" (2015) 55 *Brit. J. Criminology* 647.

13. There is no such thing as a one-hour, generic, compliance suite.

## **1.2 Help**

### **1.2.1 ChatGPT better than AUSTRAC – but nowhere near enough**

14. If you ask AI for complying documents, AI will come back with a list of questions, and:
- (a) Only you can find the answers, then calibrate the document.
  - (b) Only you are responsible for checking that against the range of files you handle, your staffing, and client profiles.
  - (c) Only you are liable for the AUSTRAC fines, and the disciplinary outcomes, if it's below par.
15. So, you cannot delegate this to AI.
16. AUSTRAC will only tell you in the most generic terms what they expect.
17. Its expectations are couched in words such as “reasonably available”, “reasonable steps”, “appropriate to the ML/TF risk”, and “policies to mitigate and manage”.<sup>2</sup>
18. But AUSTRAC will hold you to the highest standards.

### **1.2.2 AUSTRAC**

19. Documents available, as a guide, from AUSTRAC assume that you are conducting the simplest legal practice.
20. I have never seen a practice that is so simple.
21. The AUSTRAC document set is well-meaning.
22. It is a toy.

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<sup>2</sup> These are from the rule about an “Individual who cannot provide satisfactory evidence regarding a matter”. By definition, such a person is not providing something that can satisfy the requirements. So they will be denied service, rather than someone making an attempt to deal with this rule. Typically, vulnerable people will be denied services, since the risk of entering upon the territory of rule 6-10 is undefined and unintelligible: *Anti-money Laundering and Counter-Terrorism Financing Rules 2025*. They will then be subject to a suspicious transaction report.

- 23. It assumes you rarely deal with trusts and companies.<sup>3</sup>
- 24. You are at a STEP conference.
- 25. The “T” stands for “trust”.<sup>4</sup>
- 26. So, the work has not been done for you.
- 27. You must get your hands dirty.
- 28. Now.

### **1.2.3 No idea what they’re requiring of small practices**

- 29. AUSTRAC says you don’t need expensive, proprietary solutions to manage the paper storm they are unleashing.
- 30. AUSTRAC has never run a legal practice.
- 31. AUSTRAC has never attempted to defend an allegation that a small law firm’s systems were inadequate.
- 32. AUSTRAC will particularise its allegations of your non-compliance, by a line-by-line dissection of the three worst-kept files of a wrong-hire solicitor long-since gone.
- 33. You will be helpless without record-keeping that:
  - (a) is contemporaneous,
  - (b) forces compliance before next steps,
  - (c) demands senior management sign-offs as a matter progresses (or that stops the matter),
  - (d) keeps your record of compliance and compliance steps comprehensively,and links compliance proof in one client’s matters across:

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<sup>3</sup> In fact, there is about a page of assumptions. No one I know runs a legal practice of that kind. You can take those documents as a base. More will be required, and a good deal of principal’s time. You must review and adapt them, if using them as a base.

<sup>4</sup> As we will see, E(state) work can be in a high risk category. Do not let your guard down.

(e) all that client's matters,

(f) all the client's associates' matters, and

red-flags when on-going client due diligence is called for – even by reference to a change in the nature of a matter of an associate.

34. Try that with a filing cabinet, and a deck of buff-coloured file-cards.<sup>5</sup>

35. So, explore the proprietary solutions.

36. But this is still going to take you weeks.

### **1.3 The coming shake-out**

37. Every solicitors' practice in Australia requires top-to-bottom re-engineering.<sup>6</sup>

38. A lot of practices will not survive.

39. The shake-out in the USA banking sector is emblematic.

40. Smaller banks had much the same spend on systems as larger banks, and had to merge.

41. Implementation could send you broke.

42. Failing to implement whole-heartedly is more dangerous.

43. So, sell your Will-safe now, if you don't want to come for the ride.

44. Two lessons from New Zealand, that I picked up:

(a) get clarification from the Legal Profession Conduct Commissioner (and equivalent interstate) that it is permissible to charge an on-boarding fee. I gather this is about NZD250 (but varies by reference to the complexity of the client group), and even then does not begin to cover the costs involved.

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<sup>5</sup> I cannot see how you could capture the information for a suspicious transaction report efficiently, using anything other than a proprietary system, either. See rules 9-1 to 9-4.

<sup>6</sup> Barristers who intend to fall within the exception to the definition of "designated service" given by uncommenced section 6(6B) nevertheless need to be able to say that they will stop providing services if they would trench upon designated services, unless instructed by a solicitor engaged for such work. This means that bar associations are also attending to training at the moment.

- (b) in the interests of the workplace safety of staff – investigate if there is a way to get the initial client due diligence done by experts who can sustain the vocal and continued client dissatisfaction with CDD. But be careful that your clients' information is safe.<sup>7</sup>
45. The lesson from the UK is that – pretty much every week – there is a shame-list in the *Law Society Gazette* of all the law firms, big and small, where some point of compliance has failed. This is often accompanied by a statement that there had been no detected financial harm.
46. The effect is to make access to justice less unobtainable. (Fees must go up, to recover the new cost. Minority groups and foreigners will be denied access to justice, as they may have overseas connections or different customary business practices that raise red flags. The present advice seems to be that a lawyer will have to cease acting for a client or potential client if the lawyer has filed a suspicious matter report.)
47. The parliamentarians who voted for it, the mandarins who must administer it, and the judges who must enforce it, together with their families and their circle, are now automatically subject of enhanced due diligence. This makes life decidedly more difficult.
48. The estranged son of a retired judge, buying his first rental property, is now made an unjustified suspect.
- (a) You have been conscripted, with no special skills nor powers, to investigate him.
- (b) He will wonder why:
- (i) he cannot buy a rundown renter with his own modest savings,

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<sup>7</sup> There is a concern in New Zealand that one out-source provider is selling client information such as passports and drivers' licences. You have to comply with the *Privacy Act* as well if you are enrolled with AUSTRAC for AML/CTF.

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- (ii) he has triggered a general enquiry into his sources of wealth and his intentions,
- (iii) he is being asked hurtful questions about relationships with his long-estranged family.
- (iv) he has been told by two suburban law firms, probably unable or unwilling to look further into his matter, that he does not suit their risk appetite and they will not act for him.

49. The ineffectiveness of such laws is known.<sup>8</sup>

50. As of 2018, one percent of the USD2 trillion laundered annually was detected.<sup>9</sup>

51. Measurement issues around effectiveness of AML are notorious. In fact, more “effective” AML country programs seem to be marked down, and commonly used measures of effectiveness provide conflicted answers.<sup>10</sup>

52. The place with the most intensive and thoroughgoing AML requirements, London, does not offer much hope in terms of effectiveness.<sup>11</sup>

53. So, we are coming late to a failed project.

54. The inordinate costs on smaller firms elicits hand-wringing.<sup>12</sup>

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<sup>8</sup> Ronald F Pol, “Uncomfortable truths” (2018) 25(2) *Journal of Financial Crime* 294-308; Mariano-Florentino Cuéllar, “The Tenuous Relationship between the Fight against Money Laundering and the Disruption of Criminal Finance” (2003) 93 *The Journal of Criminal Law and Criminology* 311-466.

<sup>9</sup> Svenja Berg and Killian J. McCarthy, ch 1, “An Introduction to the Challenges of Money Laundering”, in McCarthy (ed) *The Money Laundering Market* (Agenda Publishing, Newcastle upon Tyne, 2018), p25, heading 1.8.

<sup>10</sup> Ronald F Pol, “Anti-money laundering effectiveness: assessing outcomes or ticking boxes?” (2018) 21(2) *Journal of Money Laundering Control* 215; Mariano-Florentino Cuéllar, (2003) 93 *The Journal of Criminal Law and Criminology* 311. See also the literature review by Tiwari, Gepp and Cumar, “A review of money laundering literature: the state of research in key areas” (2020) 32(2) *Pacific Accounting Review* 271-303 especially at 273-278.

<sup>11</sup> Note the paper which touches upon AML trends in London by Heathershaw, Cooley, Mayne, Michel Prelec, Sharman & Olivieria, “The UK’s kleptocracy problem”, Chatham House Research Paper, Russia and Eurasia Programme, December 2021, especially pages 27-33.

<sup>12</sup> See the news report by Naomi Neilson on submissions by the Law Council of Australia, “Costs of anti-money laundering proposal may harm small firms”, *Lawyers Weekly* (16 Sep 2024).

55. We all know the discriminatory impact on whole nationalities of customers, and on customers with minority beliefs.<sup>13</sup>
56. Yet, this is arriving on 1 July 2026.
57. And you needed to start working on it yesterday.

## 2 The path

58. The path is:
- (a) Determine whether your business is caught.
  - (b) Prepare for registration:
    - (i) programme;
    - (ii) compliance officer;
    - (iii) police checks and due diligence on all responsible staff;
    - (iv) training;
    - (v) system readiness for day-one – roll-out of forms and systems for record-keeping;
    - (vi) prepare to dob-in your clients, and sack them;

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<sup>13</sup> Boguslavska, “De-risking of Russian Clients”, *Basel Institute of Governance* (2023), referring to the indiscriminate denial of services to all of Russian nationality, owing to costs and limited risk-appetite of institutions.

The problem of de-banking is now endemic. See a case study from the UK involving a political figure, and the reaction to Coutts’ decision to de-bank him: Clara Barbiani - *The Right to Bank: A Proposal for Introducing a New Human Right under International Law* (Ethics International Press Limited, 2024), pp 230-234.

Perhaps more understandable, in terms of the bank’s position, is the de-banking of a widely known religious community, by Bank of New Zealand: *Bank of New Zealand v The Christian Church Community Trust* [2024] NZCCLR 720; [2024] 3 NZLR 856; [2024] NZCA 645. But that has led to proposals for action there: *Financial Markets (Conduct of Institutions) Amendment (Duty to Provide Financial Services) Amendment Bill 2025*, which was still at committee stage, as at 7 February 2026.

A charity in Australia, who had been through multiple banks, finally sued: *Merciful Group Inc v Norfina Ltd (t/as Suncorp Bank)* [2025] NSWSC 841, and see the summary of other cases at [96]. Again, Suncorp Bank gave some rational reasons for its caution. But presumably the charity was trying as best it could to assist the poor overseas, in Lebanon, Syria and Yemen.

- (vii) new obligations under the *Privacy Act* for many small law firms – completely different track of expensive changes;
- (c) enrol;
- (d) begin reviews of program, to enable annual renewal;
- (e) plan for external review of program (at your expense).

## **2.1 AUSTRAC under-states the changes for small businesses**

59. AUSTRAC has simply said:<sup>14</sup>

*By 1 July 2026 you must:*

- *have an AML/CTF program, either using a program starter kit (available January 2026) or your own*
- *have an AML/CTF compliance officer*
- *train your staff on the program, internal processes and your ML/TF risks*
- *be ready to engage with customers and clients and report suspicious matters.*

60. AUSTRAC understates a large change for many micro-businesses.

61. AUSTRAC understates this by rolling-up many steps in a couple of simple words. AUSTRAC also is in denial about the simultaneous imposition of *Privacy Act* obligations on small firms never previously subject to them, as a consequence of enrolling.

62. For example, there is repeated omission in AUSTRAC's communications about the due diligence that must be done on employees. AUSTRAC does have webpages about this topic, a few clicks deep: and some suggested forms and dictats.

63. Have no doubt. Staff due diligence is a requirement.

64. AUSTRAC apparently groups this with staff education, but it is a separate obligation.

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<sup>14</sup> <https://www.austrac.gov.au/amlctf-reform/preparing-changes-if-youre-newly-regulated> , viewed 8 February 2026



## 2.2 Levies

- 65. We have not yet been told what the levies will be in future years.
- 66. Government does not fund the private entities it has conscripted, for the work it demands.
- 67. The private sector funds the costs of them being conscripted, through industry levies.
- 68. The current position, that levies are only on medium and large businesses, is unlikely to persist (given the precedent in London).
- 69. As the Law Society in England says:<sup>15</sup>

*Most anti-money laundering (AML) regulated businesses must pay a levy to fund the fight against economic crime. This includes law firms.*

- 70. Presently, the levy in England is nil for firms turning over < £10.2m, but rapidly climbs.
- 71. It is annually £500,000 for very large firms.
- 72. It is just a tax on lawyers.
- 73. It is thus an impost on those seeking legal services. It is passed on in fees, also subject to VAT, a cascading tax on tax.
- 74. It is easy to succumb to the temptation to extend supervisory levies, from large, to small, entities. As an example in Australia, recall the recent debate about the Compensation Scheme of Last Resort levy.<sup>16</sup> There was a move to extend a levy to unadvised SMSFs that could not benefit from the CSLR, simply to raise revenue.

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<sup>15</sup> <https://www.lawsociety.org.uk/topics/anti-money-laundering/economic-crime-levy> , viewed 8 February 2026

<sup>16</sup> Refer to the debate in January 2026 in the financial pages, about extending a superannuation levy to SMSFs in Australia, where 80% of SMSFs are not entitled to make a claim against the fund fed by the levy. See the opinion piece by John Kehoe in favour of the extension of the levy, "Self-managed super investors should pay a fee for bailout insurance", published online by the *Australian Financial Review* on 7 January 2026 (published in print, p 31, 8 January 2026), and the editorial piece in the same paper (online 9 January 2026, and in print under a different headline as the Editorial at p 38 on 10 January 2026), "Labor's Compensation Scheme of Last Resort was built wrong".

### 3 Designated services<sup>17</sup>

- 75. A business needs to be enrolled with AUSTRAC if it is to provide designated services.<sup>18</sup>
- 76. You have 28 days to enrol.
- 77. But no one in their right mind would start providing designated services unless they were already enrolled. (You will never catch up with the compliance in my view.)
- 78. Failure to enrol is in a civil penalty provision.
- 79. The maximum pecuniary penalty for a body corporate is 100,000 penalty units, and for a person other than a body corporate is 20,000 penalty units. The current value of a penalty unit is \$330.

#### 3.1 What is a designated service?

- 80. For Tranche Two entities, concentrate on the definition of “designated services” in section 6(5B), table 6.
- 81. The government worded this overly broad, and it catches numerous things that should not be.
- 82. But that is an argument that has been had and lost over each of the three attempts to introduce Tranche Two. The mandarins declined our counsel. Each time.
- 83. We are stuck with this wording.
- 84. Too many people now have to enrol. Too much is caught.
- 85. AUSTRAC have already started paring back, in the face of the plain words in the legislation they repeatedly sought for the definition of “designated services”.
- 86. The best way to illustrate that is by reference to item 6 in table 6 in section 6(5B).<sup>19</sup>

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<sup>17</sup> Critically, see the guidance at - <https://www.austrac.gov.au/amlctf-reform/reforms-guidance/before-you-start/new-industries-and-services-be-regulated-reform/professional-services-reform>

<sup>18</sup> Section 51B of the *Anti-Money Laundering and Counter-Terrorism Financing Act 2006*, or “**AML Act**”.

<sup>19</sup> I have reproduced a version of table 6 in an annexure to the paper. There is no other way of explaining this.

### 3.2 Formation of entities

87. Item 6 in table 6 brings into the definition of “designated services” the following:

*assisting a person to plan or execute, or otherwise acting on behalf of a person in, the creation or restructuring of:*

*(a) A body corporate ...; or*

*(b) A legal arrangement;*

*in the course of carrying on a business.*

88. The customer of the designated service is said to be:

(a) in the case of a company which is being created – the beneficial owners and directors of the company;

(b) if the legal arrangement is an express trust which has been created – the trustee, settlor and beneficiaries.

89. The precise wording will count. Refer to the table, instead of this summary, when designing your compliance strategies. (See annexure.)

90. Now, we can see that this is overly broad.

91. The financial planners seem to have more push in Canberra than the lawyers.

92. They have got themselves a reduced form of compliance under section 6(2) table 1 item 54 and thus section 26T.

93. Evidently, they did not also wish to be caught by this item 6 in table 6.

94. That would have taken financial planners into more onerous compliance territory.

95. Thus, they procured this example, in AUSTRAC’s non-binding website guidance:<sup>20</sup>

*A financial adviser is approached by a customer seeking to establish a ... [SMSF]. It can only be established by setting up an underlying trust.*

*The financial adviser:*

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<sup>20</sup> See fn 17.

- provides financial advice on the benefits of an SMSF and an investment strategy for the SMSF
- explains the steps the person needs to take to set up a SMSF, including general advice on the steps needed to create a trust

The client agrees to the adviser's recommendations. The financial adviser introduces the client to an accountant and instructs the accountant to set up the trust.

The financial adviser then:

- reviews the trust deed to make sure it implements the financial advice provided to the client and recommends possible amendments to the accountant
- arranges for the transfer of funds from an existing fund to the SMSF. The just involves helping the client complete the rollover forms required
- assists clients by arranging SMSF investments. This just involves the financial adviser helping the client to fill in the application form.

The financial adviser's conduct both:

- constitutes 'making arrangements' in the capacity of a holder of an Australian financial services licence for a person to receive a designated service (item 54 of table 1)
- doesn't constitute a designated service under table 6.

96. Now let us return to the statutory language.

97. AUSTRAC says that the financial planner is not "assisting a person to plan ... the creation ... of ... a legal arrangement ... in the course of carrying on a business".

98. This is a curious result.

99. AUSTRAC'S reasoning begins:

*... At no point does the financial adviser receive, hold, control or manage the funds of the client's existing superannuation or the SMSF ...*

100. This is not a reference to item 6 but a reference to item 3, as AUSTRAC acknowledges.

101. Now referring to item 6, the one most obviously in question, AUSTRAC says [underlining added]:

*Item 6 of table 6 ...:*

- applies to the accountant who made the trust. Drafting and facilitating the execution of the trust deed directly advances the creation of the trust, which is the outcome under item 6. The accountant starts providing a designated

*service once they accept the client's instruction to create the trust and act upon them.*

- *does not apply to the financial adviser. The actions of the financial adviser only influenced the creation of the trust and didn't directly advance it. The general advice they provided on the creation of the trust wasn't sufficient to allow the client to create the trust themselves.*

102. This is a convenient result for the financial planning industry. This non-binding website guidance does fly in the face of the plain language of the legislation. Be careful how you use it.

103. But this result is also convenient for Tranche 2 entities

104. AUSTRAC delineates when the designated service begins, in their opinion, and this is useful for all such entities. It tends to deal with the old example of the European lawyer, speaking with a colleague in New York, who allegedly, and frustratingly, declined to provide his New York colleague with the corporate tax rate in the Netherlands until he had done KYC on the client represented by the New York lawyer.

105. The AUSTRAC non-binding website guidance goes on to say:<sup>21</sup>

*If the financial adviser decided to do any of the following, they would be providing a designated service in item 6 at table 6:*

- *take steps to directly create the trust, including acting on instructions to draft the trust deed and draw up relevant paperwork to appoint trustees and assigned beneficiaries*
- *provide advice on the creation of the trust that's comprehensive enough to allow their client to create the trust independent of any further professional assistance*

106. This indicates that an initial discussion with someone about their possible needs and circumstances, not directed to a specific transaction, does not trigger provision of designated services. It thus does not trigger other obligations.

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<sup>21</sup> I leave to one side the illegality in all States and Territories of an accountant or financial planner doing any such thing - quite irrespective of the AML regime, as it is lawyers' work. Non-binding website guidance from AUSTRAC is not a defence in a prosecution.

107. AUSTRAC says that they are focused on the transaction. AUSTRAC gives this further pair of examples in the non-binding website guidance:

*Table 6 designated services are generally expressed as services which apply currently or 'prospectively'. Meaning they apply in relation to matters that are in progress or will occur in the future. [sic]*

*For example:*

- *drafting or reviewing documentation to create a body corporate would be regulated under item 6 of table 6*
- *Following the creation of the body corporate, advising on whether the creation was lawful wouldn't be regulated, because such advice doesn't relate to the creation or restructuring of that body corporate that's in progress or will occur in the future.*

108. The usefulness of this non-binding website guidance is limited.

109. I cannot imagine being briefed on the question of whether the creation of a body corporate was lawful. So the example is artificial.

110. If I was, I could not imagine being asked simply whether it was lawful - without being asked whether my client (or the other side of the transaction) could in some way remedy any defect found. Again, it illustrates the unworldly views of AUSTRAC, and their lack of preparedness.

111. Finally, in relation to these preliminary views of AUSTRAC about the *designated services* definition, note the general guidance at the website as follows:

*We consider 'assisting' and 'otherwise acting for or on behalf of a person' as separate actions. A designated service can arise if you either 'assist' or 'otherwise act' for a client in certain circumstances.*

*The terms 'planning' and 'organising' extend to preliminary and preparatory steps that directly advance the outcome specified in the designated service, such as a transaction. This includes, for example, preparing a contract for the sale of real estate when the seller and buyer have agreed on the sale price of the property.*

*'Assisting', 'planning', 'organising' or 'otherwise acting for or on behalf of a person' will only be regulated under table 6 when it's sufficiently linked to the outcome of the designated service, which includes any of the following: ... [lists out items 1-6 in table 6]*

112. This is curious.

113. Conveyancing tradition in my home State, Queensland, is that the real estate agent prepares the offer, in the form of a completed standard REIQ/QLS contract, which includes the price and any special conditions required.
114. That offer is then put to the vendor, who may choose to accept or reject the offer.
115. Precisely at what time the real estate agent begins to provide a designated service is thus unclear, on the non-binding website guidance provided by AUSTRAC.
116. I am aware that, in other States, the real estate agent does the deal ‘commercially’, which is then conveyed to solicitors so that they can draw the contract.
117. That is not the universal practice in Australia.
118. AUSTRAC needs to grapple with reality outside New South Wales.
119. The AUSTRAC non-binding website guidance then goes on to say [underlining added]:

*To be sufficiently linked to the outcome of the relevant designated service, the following principles must be met. These principles determine who is regulated and when regulatory obligations are triggered.*

- **who:** *a person whose assistance to a customer directly advances a relevant transaction or a creation or restructure of a body corporate or a legal arrangement. Merely influencing how the customer proceeds, providing general advice or ancillary services isn't sufficient.*
- **when:** *a person starts to provide one of the designated services when they act on instructions in relation to relevant transaction or the creation or restructure of a body corporate or a legal arrangement. This will typically be when two or more parties to a transaction exist or when preparatory steps are taken to create or restructure a corporate body or legal arrangement.*

*These principles ensure that the scope of regulation is confined to:*

- *professional services that generate money laundering, terrorism financing and proliferation financing risks ...*
- *the ML/TF risks that table 6 aims to address ..., not ancillary services that may merely influence them (for example, a solicitor engaged to provide the conveyancer with advice on the legal effect of terms in a contract for sale)*
- *preparatory steps to provide services in relation to an outcome, but not outcomes that are merely hypothetical or remote.*

120. The distinctions drawn in this non-binding web guidance are difficult to implement in practice. A solicitor, engaged by a conveyancer (an occupation that does not exist in my home State) to advise the latter about the legal effect of the terms of a contract for sale may well be asked to provide directly relevant commercial guidance as to what further sum might be demanded by a party left in a more advantageous position, to enable that party to move on with the transaction. No one does the discrete kinds of tasks that AUSTRAC imagine, without (if they are true lawyers) thinking through to the commercial outcomes and where the advice will take a client. Again, AUSTRAC has no idea what they are about to start regulating.
121. There must be doubt as to the correctness of the above non-binding website guidance. AUSTRAC is not able informally to waive compliance with the law it regulates. The above possibly does not represent the law.
122. An independent examination of an AML programme that relied on such guidance would find that the program fell short.
123. Three yearly external examination of AML programmes is mandated.
- (a) Will the external examiner apply the law?
  - (b) Or will she apply non-binding website guidance?
124. It will be no comfort if actions are said by AUSTRAC to fall outside designated services on its website, but are nevertheless the basis of a prosecution for a civil penalty or for a disciplinary remedy. We will be told: “Well, you are the lawyers and the stuff on the website disclaimed being legal advice.”
125. As a way forward, an assurance from AUSTRAC’s CEO would be useful, that:
- (a) he stood behind the guidance as correct,
  - (b) he directs his officers to abide by such guidance pending legislative action, and



- (c) he will procure amendments to the AML/CTF Rules to give effect to the guidance on his website.

126. Further examples can be discussed in terms of other items in table 6.

### **3.3 Items 1 and 2 – selling real estate, selling shares**

127. Table 6 items 1 & 2 are in fact much broader than my sub-heading suggests. I commend reading those items, in the annexure.

128. Both of those items are subject to a qualification contained in their respective subparagraphs (b), as underlined below:

*(b) the sale, purchase or other transfer is not pursuant to, or resulting from,  
an order of a court or tribunal.*

129. We pointed out to AUSTRAC, in the consultation process, that the court order is the last thing that happens. An agreement will have been reached, as to the making of such an order.

130. A “consent order” is a common way of settling legal proceedings.

131. An essential element is an agreement by the parties.

132. The leading text on compromise of disputes, *Foskett on Compromise* (10<sup>th</sup> edition) says, in the chapter on consent orders:<sup>22</sup>

*Once parties have agreed the essential terms of their compromise and have chosen the machinery by which it is to be implemented, the question arises of how, in practice, the machinery is set in place.*

133. The Chief Justice said in *Arthur JS Hall & Co v Simons* [underlining added]:<sup>23</sup>

*Adult parties of sound mind may ordinarily settle proceedings by an agreement made wholly out of court ... they may for a variety of reasons choose to embody their agreement in a consent judgment of the court; this will not in the ordinary way call for any exercise of judgment by the court.*

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<sup>22</sup> *Foskett*, paragraph 10-01, page 159.

<sup>23</sup> [2002] 1 AC 615, [20].

134. Non-binding website guidance from AUSTRAC proceeds on a misunderstanding both of law and practice:<sup>24</sup>

*This exception will only apply to services that are carried out after the court order has been made. It doesn't apply to services that are provided to obtain a court or tribunal order, if those services fall within the scope of table 6.*

*Legal dispute resolution services will generally not fall under the scope of table 6, as they'll often:*

- *not constitute assistance to the client that directly advances a relevant transaction*
- *only relate to determining legal questions on matters that have already occurred, not matters that are in progress or will occur in the future*

135. In any case, AUSTRAC give this example of a “lawyer helping client claim rights over a real estate transaction”. That is a curious expression. No one speaks like that.

136. The title of the example is noteworthy, but the example may be of assistance:

*A lawyer is taking steps to dissolve a marriage.<sup>25</sup> As part of this service, the lawyer provides advice to the husband in relation to real estate that was purchased during their marriage.*

*They're not providing a designated service under item 1 of table 6 (transaction to transfer property) as there is no ongoing or future transaction. The only relevant transaction (to originally purchase the property) has already been completed.*

*The lawyer, following mediation between the parties, drafts a consent order to settle the ongoing litigation. This includes provisions related to the transfer of real estate to their client following the dissolution of the marriage.<sup>26</sup>*

*This is also not a designated service under item 1 of table 6, as all of the following apply:*

- *there's no transaction at this point*
- *this doesn't directly advance the planning of a transaction to transfer real estate*
- *only influences a possible future conveyancing process (which would directly advance this transaction) by determining the legal rights of the parties to the real estate.*

<sup>24</sup> Nevertheless, it is probably going to be convenient for people doing property disputes in the Family Court and Federal Circuit Court.

<sup>25</sup> In Australia, parties leave proceedings for dissolution till last. The timing is driven by the *Family Law Act*. Property & maintenance proceedings are not proceedings for dissolution.

<sup>26</sup> See fn 25

*If the consent order is made by a court, the transfer of the property by a conveyancer pursuant to this order isn't providing a designated service.*

*If no court or tribunal order was made, and the property was instead transferred to their client pursuant to a binding financial agreement agreed by the parties, then:*

- if the family lawyer provides work in drafting and executing the binding financial agreement, this wouldn't be regulated, as this isn't performed in connection to a transaction*
- the conveyancer's services to directly advance the transfer of the property pursuant to the agreement would be regulated under item 1 of table 6.*

137. It is difficult to know where to begin.

138. The consent order is the result of the agreement made at the mediation, for new rights to be created over property, or existing claims to be relinquished.

139. The example in relation to a binding financial agreement, so far as the solicitor is concerned, is also difficult to follow.

140. Nevertheless, that is the non-binding website guidance that we are given by AUSTRAC.

### 3.3.1 What about making a Will?

141. One might be forgiven for thinking that a potential gift of real estate or securities by Will would also be caught.

142. For real estate, item 1 in Table 6 relevantly says:

*assisting a person in the planning or execution of a transaction, or otherwise acting for or on behalf of a person in a transaction, to sell, buy or otherwise transfer real estate, ...*

143. This is deliberately “fuzzy drafting” so that the government can say whatever they like about the meaning of the words used. “Transaction” is a wide word. Transfer is the ultimate result of the administration of an estate of someone who dies leaving land.

144. AUSTRAC's non-binding website guidance says [underlining added]:

***Body corporate or legal arrangement (items 2, 4–5, 6–9)***

*This section refers to the Act section 5.*

Table 6 regulates certain services related to a body corporate or legal arrangement (items 2, 4 and 6–9) or shelf companies (item 5).

‘Body corporate’ refers to a person, association or group of persons legally incorporated into a corporation. This includes a shelf company, which is a company that has been registered with Australian Securities and Investments Commission (ASIC) but hasn’t traded or engaged in any business activity, and doesn’t have any assets or liabilities.

Legal arrangement means any of the following:

- an express trust
- a partnership
- a joint venture
- an unincorporated association
- an arrangement, including a foreign arrangement such as a fiducie, treuhand or fideicomiso, similar to an arrangement mentioned above.

An express trust includes a trust expressly or intentionally created in writing by a settlor. This doesn’t include trusts created solely by operation of law (not in writing) and explicitly doesn’t include a testamentary trust.

This means that the drafting of a will, and the subsequent creation of a testamentary trust, won’t constitute a designated service under items 2, 4–5 and 6–9.

145. A testamentary trust is generally regarded as an express trust.<sup>27</sup> It is created under a document, called a “Will”. So, it is only by reference to a definition in section 5, which excepts from the general law meaning of “express trust” a testamentary trust, that the example has a hope of being correct. But this is only part of the answer. It is not compulsory, though generally is done, to include a testamentary trust in a Will. A Will might simply leave “all my assets to my friend David”. That does not create a trust, though the administration might lead to something resembling a trust. The commonplace in Australia is to use words such as: “and I leave the rest and residue, after payment of my just debts, funeral and testamentary expenses, upon trust to my friend David”.

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<sup>27</sup> The reason why it is important to know precisely whether a testamentary trust is an “express trust” lies in the repeated use of the expression “legal arrangement” in section 5, which relevantly mentions “an express trust”. The term “express trust” is defined in section 5 as “a trust expressly and intentionally created in writing by a settlor but does not include a testamentary trust”.

146. And notice that this is not guidance about item 1.

147. Again, and only in relation to item 6 in Table 6 [underlining added]:

***Creating or restructuring a body corporate or legal arrangement***

*This section refers to the Act section 6 and Explanatory Memorandum paragraphs 380–382.*

...

*For the purposes of item 6 of table 6, restructuring refers to changing the legal form of the body corporate or legal arrangement. This includes altering the legal structure of a body corporate or legal arrangement through a merger or demerger.*

- *Restructuring doesn't extend to aspects of the body corporate or legal arrangement that are unrelated to its legal form, such as its:*
- *organisational staffing profile*
- *IT systems*
- *debt restructuring for small businesses under the Corporations Act 2001. Although the debt and equity financing designated service (item 4 of table 6) may separately apply to some debt restructuring scenarios.*

*It doesn't include services related to the creation or restructuring of any of the following:*

- *testamentary trusts or trusts that aren't created intentionally or in writing. Such as trusts created solely by operation of law [Sic]*

...

148. Will-making is regulated in a complex way in England. If, for example, a gift is left to children, one or more of whom is under-age, this involves a testamentary trust. That is definitely in-scope in England.<sup>28</sup> You will only get those instructions, about the family, present estate, and the intended gift, once you have entered upon the work.

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28

149. The difficulty that the government has created for itself, and thus for 80,000-90,000<sup>29</sup> mostly small businesses, is that they ignored advice, and drafted the designated services too broadly.

150. In England:<sup>30</sup>

*Activities that have a lower risk of exposure to money laundering are not covered, for example:*

- *paying costs to lawyers*
- *providing legal advice*
- *litigation*
- *will writing*

151. In New Zealand, a colleague at the Bar cannot understand my concern about continuing to provide prospective tax advice. Evidently, they do not have the breadth of language in New Zealand that has been adopted here. The colleague just tells me it is not regulated as it is “just advice”.

152. So be careful in engaging people from other jurisdictions to assist in setting up compliance. The language used to define designated services in Australia is much broader than some other jurisdictions.

## 4 Suspicious matter reports (SMRs)

153. This area is yet to be developed fully. It would seem the view being taken is that it is inconsistent with the relationship of trust that must exist between lawyer and client, for the lawyer to continue to act after filing an SMR.

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<sup>29</sup> Per Norton Rose - <https://www.nortonrosefulbright.com/en/knowledge/publications/4bdd08b3/australia-amlctf-reforms-a-new-era-in-financial-crime-prevention#:~:text=With%20an%20estimated%2080%2C000%2D90%2C000,plans%20early%20to%20ensure%20readiness.>

<sup>30</sup> Per the Law Society's website: <https://www.lawsociety.org.uk/topics/anti-money-laundering/aml-compliance-for-small-firms> , viewed 17 February 2026.

154. Last I heard the various lawyers' Conduct Rules were being amended. This again shows the lack of preparedness of Australia for a thoroughgoing change to an industry. I am not attempting to apportion blame – the conduct rules are difficult to amend for a reason, and we only recently have the AUSTRAC guidance and [almost] final legislation and rules.
155. There is an obligation to file an SMR in a long list of circumstances. To pick a few:
- (a) You are approached to do work, it is a designated service, and one ordinarily provided by your business. (You might already be engaged, but this emphasises the fact that you need not be engaged, nor be retained.)
  - (b) If so – you suspect that the client is not who she says she is; or that the information you have may be relevant to investigation of a variety of offences and things.<sup>31</sup>
156. There is the most limited exception to the obligation to provide an SMR if the totality of the information you have is protected by LPP.
157. There is still debate with government about how LPP claims will be determined. It is rather difficult to see how this will occur, given the prohibition in tipping off the client, under section 123.

## 5 So what does your first day look like?

158. You prepared your AML programme to meet section 26B of the Act<sup>32</sup> and Part 5 of the Rules.<sup>33</sup>
159. You found and listed the designated services you currently provide, and any that you think likely to be provided.

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<sup>31</sup> Section 41 of the Act.

<sup>32</sup> *Anti-Money Laundering and Counter-Terrorism Financing Act 2006 (Cth)*.

<sup>33</sup> *Anti-Money Laundering and Counter-Terrorism Financing Rules 2025 (Cth)*.

160. You also trained staff on the new obligations, the parts of the AML programme relevant to them, and ran them through the new procedures and forms.

161. In the process of preparing:<sup>34</sup>

- (a) You uncovered staff who no longer fitted with the firm, and eased them.
- (b) You uncovered some services being provided that ought not given the firm's risk management and experience in those fields.
- (c) You decided it was no longer profitable to offer some services and no longer profitable to service some clients. These decisions came, not from any AML risk, but a deep dive in the business' processes and sectoral profits.

162. Once you were prepared, you enrolled with AUSTRAC.

163. Now, the moment of truth.

164. The doors open on Wednesday 1 July 2026.

## **5.1 New client calls**

165. Actually – for us – any client calls. There is not going to be any sensible margin offered us for KYC, so we might as well start getting clients to profile themselves, as all new enquiries come in.

166. This really has to be pushed down to capable clerical staff.

167. You immediately hit a client who will not arrange to provide identity documents.

168. I think you try to reason with the person, and in the meantime make clear you cannot progress work on designated services without performing KYC.

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<sup>34</sup> Please get hold of Sarah Kebbell's book, fn 1, and read ch.8, as to the attitudinal position of UK lawyers in a mature system. I obtained my copy via my State Library, as an electronic download, Join your own State Library and the National Library for such benefits. At SLQ, the link is [https://onesearch.slq.qld.gov.au/permalink/61SLQ\\_INST/1qml3th/cdi\\_informaworld\\_taylorfrancisbooks\\_10\\_4324\\_9780429019906\\_version2](https://onesearch.slq.qld.gov.au/permalink/61SLQ_INST/1qml3th/cdi_informaworld_taylorfrancisbooks_10_4324_9780429019906_version2)



## **5.2 Suspicious matter report**

169. Continued failure to assist with this process simply merits a suspicious matter report.  
(And you have earned no fee from this person.)
170. No fact in that conversation was likely privileged. There is no difficulty in filing the report, apart from the level of detail that occupies your next hour in doing so.
171. It is harder if it is an existing client, and you have fairly recent identity materials. All you can do is appeal to reason and the disruption that will be faced in moving to a new lawyer, especially part-way through a transaction.

## **5.3 WHS**

172. In the process of attempting to on-board a client who has proved resistant to providing needed identity documents, the client yelled at a senior secretary.
173. The secretary has gone home.
174. You consult your WHS policy on ensuring mental health.
175. It needs an update.
176. You hear about NZ firms outsourcing KYC, including because of WHS issues, and wonder if it is offered here. You park that idea. The phone has rung again.

## **5.4 Manuals and programmes – and paperwork about paperwork**

177. You note the need for further training in inter-personal skills, and wonder whether these things should be added to the AML programme, the WHS manual, the *Privacy Act* PPP, or all of them. The AML programme must be kept up to date. You should be documenting what you learn and endeavour to update the manual as and when required.
178. And you should be documenting the perceived need to change training programmes.

179. That first phone call has cost you 3 hours, a workcover claim, and you are now on the radar (with your SMR) for a client who was not accepted, and paid no on-boarding or other fee.

**David W Marks KC**

6 March 2026

**Extract from section 6 of the Act (taken from AUSTRAC's future law compilation:***Table 5—Real estate services*

(5A) Table 5 is as follows:

| <b>Table 5—Real estate services</b> |                                                                                                                                                                                 |                                                                           |
|-------------------------------------|---------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|---------------------------------------------------------------------------|
| <b>Item</b>                         | <b>Provision of a designated service</b>                                                                                                                                        | <b>Customer of the designated service</b>                                 |
| 1                                   | brokering the sale, purchase or transfer of real estate on behalf of a buyer, seller, transferee or transferor in the course of carrying on a business                          | both:<br>(a) the seller or transferor; and<br>(b) the buyer or transferee |
| 2                                   | selling or transferring real estate in the course of carrying on a business selling real estate, where the sale or transfer is not brokered by an independent real estate agent | the buyer or transferee                                                   |

*Table 6—Professional services*

(5B) Table 6 is as follows:

| <b>Table 6—Professional services</b> |                                                                                                                                                                                                                                                                                                                                                                                            |                                           |
|--------------------------------------|--------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|-------------------------------------------|
| <b>Item</b>                          | <b>Provision of a designated service</b>                                                                                                                                                                                                                                                                                                                                                   | <b>Customer of the designated service</b> |
| 1                                    | assisting a person in the planning or execution of a transaction, or otherwise acting for or on behalf of a person in a transaction, to sell, buy or otherwise transfer real estate, where:<br>(a) the service is provided in the course of carrying on a business; and<br>(b) the sale, purchase or other transfer is not pursuant to, or resulting from, an order of a court or tribunal | the person                                |
| 2                                    | assisting a person in the planning or execution of a transaction, or otherwise acting for or on behalf of a person in a transaction, to sell, buy or otherwise transfer a body corporate or legal arrangement, where:<br>(a) the service is provided in the course of carrying on a business; and                                                                                          | the person                                |

**Table 6—Professional services**

| Item | Provision of a designated service                                                                                                                                                                                                                                                                                                                                                                                                                                            | Customer of the designated service                                                                                                                                                                                                                                                                             |
|------|------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
|      | (b) the sale, purchase or other transfer is not pursuant to, or resulting from, an order of a court or tribunal                                                                                                                                                                                                                                                                                                                                                              |                                                                                                                                                                                                                                                                                                                |
| 3    | receiving, holding and controlling (including disbursing) or managing a person's:<br>(a) money; or<br>(b) accounts; or<br>(c) securities and securities accounts; or<br>(d) virtual assets; or<br>(e) other property;<br>as part of assisting the person in the planning or execution of a transaction, or otherwise acting for or on behalf of a person in a transaction, in the course of carrying on a business (other than in a circumstance covered by subsection (5C)) | the person                                                                                                                                                                                                                                                                                                     |
| 4    | assisting a person in organising, planning or executing a transaction, or otherwise acting for or on behalf of a person in a transaction, for equity or debt financing relating to:<br>(a) a body corporate (or proposed body corporate); or<br>(b) a legal arrangement (or proposed legal arrangement);<br>in the course of carrying on a business                                                                                                                          | the person                                                                                                                                                                                                                                                                                                     |
| 5    | selling or transferring a shelf company, in the course of carrying on a business                                                                                                                                                                                                                                                                                                                                                                                             | the buyer or transferee                                                                                                                                                                                                                                                                                        |
| 6    | assisting a person to plan or execute, or otherwise acting on behalf of a person in, the creation or restructuring of:<br>(a) a body corporate (other than a corporation under the <i>Corporations (Aboriginal and Torres Strait Islander) Act 2006</i> ); or<br>(b) a legal arrangement;<br>in the course of carrying on a business                                                                                                                                         | the person and:<br>(a) if the body corporate is a company and the service is creating the company—the beneficial owners and directors of the company; or<br>(b) if the legal arrangement is an express trust and the service is creating the express trust—the trustee, settlor and beneficiaries of the trust |
| 7    | acting as, or arranging for another person to act as, any of the                                                                                                                                                                                                                                                                                                                                                                                                             | the nominator                                                                                                                                                                                                                                                                                                  |

**Table 6—Professional services**

| Item | Provision of a designated service                                                                                                                                                                                                                                                                                                                                                                                                                                                                                               | Customer of the designated service         |
|------|---------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|--------------------------------------------|
|      | <p>following, on behalf of a person (the <b>nominator</b>), in the course of carrying on a business:</p> <p>(a) a director or secretary of a company;</p> <p>(b) a power of attorney of a body corporate or legal arrangement;</p> <p>(c) a partner in a partnership;</p> <p>(d) a trustee of an express trust;</p> <p>(e) a position in any other legal arrangement that is functionally equivalent to a position mentioned in any of the above paragraphs;</p> <p>other than in a circumstance covered by subsection (5E)</p> |                                            |
| 8    | acting as, or arranging for another person to act as, a nominee shareholder of a body corporate or legal arrangement, on behalf of a person (the <b>nominator</b> ), in the course of carrying on a business                                                                                                                                                                                                                                                                                                                    | the nominator                              |
| 9    | providing a registered office address or principal place of business address of a body corporate or legal arrangement, in the course of carrying on a business                                                                                                                                                                                                                                                                                                                                                                  | the person to whom the service is provided |

(5C) For the purposes of item 3 of the table in subsection (5B), the circumstances are as follows:

- (a) the money, accounts, securities, securities accounts, virtual assets or other property being held or managed is payment by the person for the provision of goods or services by the business;
- (b) both:
  - (i) the business does not provide any designated services other than the services referred to in item 3 of the table in subsection (5B); and
  - (ii) the money, accounts, securities, securities accounts, virtual assets or other property being held or managed is for payments reasonably incidental to the provision by the business of a service that is not a designated service;
- (c) the money, accounts, securities, securities accounts, virtual assets or other property being held or managed is to be received or payable under an order of a court or tribunal;
- (d) the service provided by the business is the receipt or disbursement of a payment mentioned in subsection (5D);
- (e) the service is any other designated service;
- (f) a circumstance specified in the AML/CTF Rules.

Note: An example of a circumstance to which paragraph (b) applies is fees paid to a barrister for representation in legal proceedings or property management services.

- (5D) For the purposes of paragraph (5C)(d), the payments are:
- (a) a payment to or from any of the following:
    - (i) a government body;
    - (ii) a court or tribunal of the Commonwealth, a State, a Territory or a foreign country;
    - (iii) a public international organisation;
    - (iv) a person who is licensed under a law of the Commonwealth, a State or a Territory to provide insurance, including self-insured licensees; or
  - (b) a payment of a kind specified in the AML/CTF Rules.
- (5E) For the purposes of item 7 of the table in subsection (5B), the circumstances are:
- (a) acting, or arranging for another person to act, in a fiduciary capacity pursuant to, or as a result of, an order of a court or a tribunal; or
  - (b) acting as the trustee of a regulated debtor's estate (within the meaning of Schedule 2 to the *Bankruptcy Act 1966*); or
  - (c) a circumstance specified in the AML/CTF Rules.

*Geographical link*

- (6) An item of a table in this section, other than item 32A of table 1, does not apply to the provision by a person of a service to a customer unless:
- (a) the service is provided at or through a permanent establishment of the person in Australia; or
  - (b) both of the following subparagraphs apply:
    - (i) the person is a resident of Australia;
    - (ii) the service is provided at or through a permanent establishment of the person in a foreign country; or
  - (c) both of the following subparagraphs apply:
    - (i) the person is a subsidiary of a company that is a resident of Australia;
    - (ii) the service is provided at or through a permanent establishment of the person in a foreign country.

Note: For **resident**, see section 14.

*Designated services provided within business groups*

- (6A) Despite anything in this section, a service is not a **designated service** if:
- (a) any of the following apply:
    - (i) a member of a business group provides the service to another member of the business group;
    - (ii) the service is of a kind described in item 48 of table 1 and the guarantor and borrower are members of the same business group;
    - (iii) the service is of a kind described in item 49 of table 1 and the guarantor and borrower are members of the same business group;
    - (iv) the service is of a kind specified in the AML/CTF Rules; and
  - (b) the service is not of a kind specified in the AML/CTF Rules; and
  - (c) the requirements (if any) specified in the AML/CTF Rules are met.

Note 1: Item 48 of table 1 covers guaranteeing a loan, where the guarantee is given in the course of carrying on a business of guaranteeing loans.

Note 2: Item 49 of table 1 covers making a payment, in the capacity of guarantor of a loan, to the lender, where the guarantee was given in the course of carrying on a business of guaranteeing loans.

*Services provided by barristers on instructions of a solicitor*

- (6B) Despite anything in this section, a service is not a **designated service** if the service is provided by a person in the course of legal practice as a barrister on the instructions of a solicitor, if the instructions are given in connection with the provision of a designated service.

*Amendment of items*

- (7) The regulations may amend an item of a table in this section.

## MEMORANDUM

**RE:** Summary of Episode from Geoff White – “Rinsed”, ch.1

**DATE:** 6 March 2026

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1. The entertaining book on money laundering by Geoff White, “Rinsed”, begins with a story that could not be repeated today, at least in detail.
2. Times have moved on.
3. But the motivations, human frailties and high-level concepts are still relevant.
4. He tells a story of Pablo Escobar, the Columbian drug lord, and his brother, an accountant, Roberto.
5. And he tells a parallel story of an attorney in Florida who professionally laundered drug money.
6. “When we think of the drug trade, we tend to see it from one direction – the flow of narcotics into somewhere like the US. We often don't consider the reverse flow – of money travelling back to trafficking centres like Colombia. But this is where laundering comes into the picture, and where [Pablo Escobar’s brother, Roberto, an accountant] would become increasingly entwined in his brother’s story.  
  
Roberto became the cartel’s accountant, and therefore the incoming flow of money was his problem.”
7. Cocaine was an ideal product because it was compact and expensive.
8. But if 1200 kilograms of cocaine was flown to the USA and sold for \$16 million, the drug lord was unable to fit the money back on the return journey of the plane even in large denomination notes.
9. “But having bank notes was essential, partly for pay-offs. For example, Escobar’s brother [the accountant] claims that when a Peruvian intelligence chief had to be bribed to allow drug planes to land, he demanded \$100,000 for each one, in cash.”
10. So they resorted to hiding the cash in a network of houses behind fake styrofoam walls. Cash was squirreled away on farms, in dustbins and inside sofas.



11. Pablo Escobar’s brother, Roberto, the accountant, ‘famously claims to have spent \$2,500 per month on rubber bands just to hold it all together.’
12. By the 1980s when the cocaine trade was in full swing there were huge volumes of cash which needed “professional laundering services”.
13. This is the point at which I introduce you a parallel story, not of an accountant, but of a lawyer
14. Meet Mr Ken Rijock. He was a Florida lawyer.
15. He had made a career in the banking industry as a lawyer.
16. He was at something of a low ebb in his life.
17. But one day someone – not Pablo Escobar – came to him with a problem.
18. By way of background, by that stage Florida was something of the Wild West and it had been reported in 1981 that Miami’s Federal Reserve Bank branch had a currency surplus of \$5 billion, said to be “mostly in drug-generated \$50 and \$100 bills”.
19. “[A]ll this ready money would furnish a lucrative business opportunity”.
20. Mr Rijock met a ship’s captain.
21. The captain had made \$6 million in cash from a marijuana deal.
22. He approached Mr Rijock to handle the money.
23. “... [W]hen the ship’s captain came to him with \$6 million of drug money, Rijock considered it a challenge. ... [The] system by which he laundered the cash is a step-by-step introduction to the basics of the trade: Money Laundering 101, if you like. There are three classic stages: placement, layering and integration.”
24. In the case of Mr Rijock, he knew that he could not assist the ship’s captain with the \$6 million in cash by going to a US bank.
25. “He found a solution on the tiny Caribbean island of Anguilla, a British Overseas Territory on the edge of the North Atlantic, with a population of less than 20,000.”
26. Essentially the government of this small country had limited opportunities to generate business.
27. “So Anguilla had, like many of its island neighbours, begun offering financial and corporate services ...”.
28. There was a lot of competitors offering such corporate services.
29. The reason to choose Anguilla was that it offered “secrecy”.
30. “As Rijock discovered, the money held in Anguilla’s banks and the identities of the people behind the companies registered on the island would be hidden behind a veil of bureaucracy.”
31. To smuggle the cash out of the US, Rijock recruited a motley crew of accomplices, swapped their beach clothes for smart suits and gave them each a briefcase full of money. They would fly together with him to Anguilla, posing as property investors.”

32. They then went to the bank.
33. In fact there was “quite literally, a shopping mall full of banks ready to receive the money”.
34. These banks were lax about identity checks, even to the extent that the ship’s captain “used a rubber stamp bearing the image of Mickey Mouse” to sign his own name.
35. “As Rijock waited in the shopping mall of banks, the clerk ran his client’s money through their counting machine.”
36. “With the skipper’s money now in the care of an Anguillan bank, the placement stage was complete. The next step in the laundering process is layering, which means moving the money around to make it harder to trace, and to break the connection between the money and the crime that created it.”
37. Rijock created shell companies helped by a corrupt local lawyer.
38. His secretaries signed as sole shareholders of these shell companies.
39. Rijock got the bank in Anguilla to send the money to these shell companies.
40. They used bearer shares, sent the money overseas to Switzerland, France and Taiwan, used cheques to move money, and did everything possible to throw investigators off the scent.
41. Mr Rijock knew that this was all illegal activity. He has spoken about it since he got out of jail.
42. The question on your lips is why an intelligent lawyer would get himself involved in these illegal escapades.
  - (a) He was bored.
  - (b) He was intelligent.
  - (c) So far as the marijuana deal was concerned, he could justify to himself helping the ship’s captain by saying that he never believed in the prohibition on marijuana in the first place.
  - (d) That ignores the fact that he was subverting the criminal justice system and corrupting people by the means used for the money laundering.
  - (e) The guy also must have had a kick out of the risks he was taking. His girlfriend worked for law enforcement.

So there is a complex array of motivations and stupid self-justifications, but no real rational explanation.

43. At this stage we have placed the money, and we have done a deal of layering of the money.
44. The next and final stage of money laundering is “integration”.
45. The most productive way of integrating the money is to spend it on some kind of legitimate business or asset that is going to give “an income even when your criminal

days are behind you”. You might buy property, art, or other things where you have some chance of being able even to enjoy them upon your release from prison.

46. “In the skipper’s case, he and some of his colleagues used their newly washed drug money to buy a glamorous restaurant in the Miami. This was not just a fun hang-out. The restaurant also gave them a couple of advantages: firstly, because it was a cash-intensive business, when the skipper got more drug money he could wash it through the restaurant’s tills, potentially avoiding having to take it to Anguilla. ... and secondly, the restaurant was ostensibly a legitimate business (albeit secretly acquired with criminal property) so the skipper could pay his taxes like a regular businessman, thereby avoiding the risk that the Internal Revenue Service might get suspicious.”
47. Ultimately Mr Rijock faced justice. He has written or spoken frankly about the criminal activities that he regrets, but he got to spend time in jail.

**David W Marks KC**

6 March 2026