



Law Council
OF AUSTRALIA

National Legal Profession Anti-Money Laundering and Counter-Terrorism Financing Guidance—Legal profession designated services

Guidance Note 4

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Introduction

Purpose

The Guidance Note addresses the newly regulated ‘designated services’ relevant to the legal profession, listed in table 6, section 6(5B) of the *Anti-Money Laundering and Counter-Terrorism Financing Act 2006* (Cth). It explains what the designated services are, outlines what services are not designated services, and helps you work out whether the legal services you provide are ‘designated services’ or not.

Audience

This Guidance Note is intended to be used by Australian legal practitioners that provide legal services to clients outside their own organisation. It is not intended for use by in-house and government legal practitioners, who do not provide designated services to their employer under the AML/CTF regime.

Disclaimer

This Guidance Note has been developed to assist you in navigating and understanding the AML/CTF Regime by providing the Law Council’s interpretation of the AML/CTF framework. The views expressed in this guidance do not, and cannot, provide an authoritative interpretation of the relevant legislation, and are not legal advice. The adoption of any of the recommendations in this guidance is voluntary and to be applied at your own discretion.

Reference materials

- [Anti-Money Laundering and Counter-Terrorism Financing Act 2006](#) (AML/CTF Act)
- [Explanatory Memorandum to the AML/CTF Bill](#) (Explanatory Memorandum)
- [Supplementary Explanatory Memorandum to the AML/CTF Bill](#) (Supplementary Explanatory Memorandum)
- [Addendum to the Explanatory Memorandum to the AML/CTF Bill](#) (Addendum to Explanatory Memorandum)
- [Anti-Money Laundering and Counter-Terrorism Financing Rules 2025](#) (AML/CTF Rules)
- [Anti-Money Laundering and Counter-Terrorism Financing \(Class Exemptions and Other Matters\) Rules 2007](#) (Class Exemption Rules)
- [AUSTRAC Professional Designated Service Guidance](#) (AUSTRAC Guidance)
- [AUSTRAC Exemptions Guidance](#) (AUSTRAC Exemptions Guidance)

What designated services are relevant to the legal profession?

Overview

It is critical that you assess whether you provide any '*designated services*' because, if you do, from 1 July 2026 your practice will have to comply with the new anti-money laundering and counter-terrorism financing legislative regime (**AML/CTF Regime**).

Unless an exemption applies, you will provide a '*designated service*' if you provide any of the services listed in the tables in section 6 of the AML/CTF Act to the defined recipient of the service, the '*customer*'.

The designated services

The designated services relevant to the legal profession are in Table 6, '*Professional Services*', in section 6(5B).

Table 6—Professional Services

Table 6, '*Professional Services*' lists **nine** designated services, which are, in summary:

Item 1—Real estate transactions

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 the service is provided in the course of carrying on a business, and the transfer is not pursuant to or resulting from an order of a court or tribunal.

Item 2—Body corporate transactions

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 the service is provided in the course of carrying on a business, and the sale, purchase or other transfer is not pursuant to, or resulting from, an order of a court or tribunal.

Item 3—Holding money (etc)

Receiving, holding and controlling (including disbursing) or managing a person's money, accounts, securities and securities accounts, virtual assets, or other property, 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 as covered by subsection (5C)).

Item 4—Equity and debt financing

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 a body corporate or proposed body corporate, or a legal arrangement or proposed legal arrangement, in the course of carrying on a business.

Item 5—Shelf companies

Selling or transferring a shelf company, in the course of carrying on a business

Item 6—Creating or restructuring companies

Assisting a person to plan or execute, or otherwise acting on behalf of a person in, the creation or restructuring of a body corporate (other than a corporation under the *Corporations (Aboriginal and Torres Strait Islander) Act 2006* (Cth)) or a legal arrangement, in the course of carrying on a business.

Item 7—Acting in certain positions

Acting as, or arranging for another person to act as, a director or secretary of a company, a power of attorney of a body corporate or legal arrangement, a partner in a partnership, a trustee of an express trust, or a position in any other legal arrangement that is functionally equivalent to any of these positions, on behalf of a person, in the course of carrying on a business, except as covered by subsection (5E).

Item 8—Nominee shareholder

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 nominator), in the course of carrying on a business.

Item 9—Business address

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.

Provided to a ‘customer’

You will only provide a ‘*designated service*’ if you provide the services listed above to the specific recipient/s defined in table 6 as the ‘*customer*’.

For Items 1, 2, 3, and 4, the customer of the designated service is defined as ‘*the person*’ to whom the designated service is provided. In the context of these Items, ‘*the person*’ is the client to whom you are providing the service/s—meaning that your client is the customer of the designated service, and the person in relation to whom you owe AML/CTF obligations. This is also the case for Item 5, though the customer is defined as ‘*the buyer or transferee*’, and for Items 7 and 8 though the customer is defined as ‘*the nominator*’, and Item 9 which defines the customer as ‘*the person to whom the service is provided*’.

[Item 6](#) has a different definition of the ‘*the customer*’ which requires special consideration.

How do I work out if I provide any of these designated services?

Working out whether any of the legal services you provide are designated services can be complicated as there are multiple exclusions and exemptions to the Table 6 Items, which are contained in the text of the Items themselves, other sections of the AML/CTF Act, AUSTRAC's interpretation of the legislation as set out in its Guidance, the AML/CTF Rules, and the AML/CTF Class Exemption Rules. The Explanatory Memorandum may also be relevant.

To determine whether you are or will provide a designated service/s, you should consider the following questions:

- [First, do you satisfy the threshold geographic link requirement?](#)
- [Second, do any of the services you provide or intend to provide fall within the description of one of the Items in Table 6, section 6 of the AML/CTF Act?](#)
- [Third, do any exemptions or other exclusions apply?](#)
- [Finally, should you apply AUSTRAC's safe harbour guidance?](#)

AUSTRAC has developed regulatory guidance for navigating novel circumstances that you should apply if it is still not clear to you whether any of the legal services you provide are, or are not, designated services after considering the detailed descriptions of the Items in this Guidance, AUSTRAC's Guidance, and other AUSTRAC materials.

If applied, the approach outlined in AUSTRAC's guidance should effectively provide you with 'safe harbour' in the event that you inadvertently misinterpret the law.

Geographical link requirement

Section 6(6) of the AML/CTF Act provides that a designated service must have a 'geographical link' to Australia to be within the scope of the Regime.

There will be a geographic link to Australia if:

- The service is provided at or through a permanent establishment (a place at or through which you conduct any activities or business, for example, at an office, or online via an Australian server) in Australia;
- The service is provided at or through a permanent establishment in a foreign country by a person who is a resident of Australia;
- The service is provided at or through a permanent establishment in a foreign country by a subsidiary of a company that is a resident of Australia.

A permanent establishment is a place at or through which you conduct any activities or business, including through an agent. It includes both an overseas branch or office, as well as you or your agent providing a designated service while operating on a mobile basis or travelling in another country.

For more information about the geographical link requirement, please refer to AUSTRAC's [website](#).

The Table 6 designated services

A detailed description of the Table 6 designated services is set out below.

Item 1: Real Estate transactions

You will provide the Item 1 designated service to a ‘customer’ where:

- you *either*:
 - assist a person in the planning or execution of a transaction; *or*
 - otherwise act for or on behalf of a person (your client) in a transaction; and
- the transaction is for the sale, purchase, or other transfer of real estate; and
- the sale, purchase, or other transfer is not pursuant to, or resulting from, an order of a court or tribunal; and
- you provide this service to the person in the course of carrying on a business.

What does it mean to ‘assist’ a person in relation to this Item?

AUSTRAC’s Guidance explains that it is of the view that you will ‘assist’ a person in the planning or execution of a transaction to sell, buy, or otherwise transfer real estate, where you provide a service that is ‘*sufficiently linked*’ to the sale, purchase, or transfer.¹

AUSTRAC has developed the following two principles that determine whether a service is *sufficiently linked* to the sale, purchase, or transfer of real estate:

- **Who principle:** services provided to a customer must ‘*directly advance*’ the outcome of this designated service (transferring real estate). This means that they must involve ‘*active steps that move the ... outcome forward*’; services that ‘merely influence’ how a customer proceeds do not satisfy this threshold; and
- **When principle:** services start to be provided at the point in time that you act on instructions that directly advance the outcome of a designated service. What this requires varies for each of the Items. In the context of Item 1, the ‘when’ principle requires that a transaction exists.

Both of these principles must be satisfied for a designated service to be provided.

By adopting this interpretive approach, AUSTRAC has narrowly construed the term ‘*assisting ... in a transaction*’. This is designed to ensure the scope of regulation is consistent with a risk-based approach, by excluding activities with little or no money laundering, terrorism financing, or proliferation financing risk (**ML/TF risk**). This interpretive approach and the principles outlined above apply to all Table 6 designated services that use the term ‘*assisting*’, though they apply a bit differently in the context of each Item.

In the specific context of Item 1, the principles operate such that you will only be assisting a client in relation to Item 1 when you provide services that ‘*directly advance*’ the outcome, and when a transaction exists.

¹ AUSTRAC, *Professional Designated Service Guidance* (Regulatory Guidance, 31 March 2026).

Who principle

As outlined above, the ‘who’ principle requires that the services you provide to a customer must constitute ‘*active steps that move the ... outcome forward*’.

AUSTRAC’s Guidance explains that in the context of Item 1, this will generally be the case where:

- you are the lawyer with primary carriage of a transaction to purchase real estate (provided that the ‘when’ principle is also satisfied);
- you provide advice that is comprehensive enough to enable the client to proceed on their own to carry out the transaction themselves (again, provided that the ‘when’ principle is satisfied).

This principle is *not* met where the services you provide ‘*merely influence*’ whether the transaction will occur or not.

In the context of Item 1, this will be the case where you:

- provide purely advisory services, such as:
 - advice on the process of buying and selling real estate;
 - advice regarding the disposal of the family home in family law proceedings;
- provide an ancillary service to another service provider who is directly advancing a transfer; for example:
 - advice to a conveyancer on the legal effect of terms in a contract for sale;
 - advice on a specific aspect of a transaction in progress, such as the terms of the agreement (for example, a tax lawyer or an intellectual property lawyer).

When principle

In the specific context of Item 1, the ‘when’ principle will be satisfied when a transaction exists.

In the context of conveyancing, this will typically be when there is at least one buyer and one seller of a specific property, and a price has been agreed. Importantly, the buyer or seller does not need to be specifically identified.

How this will be satisfied will depend upon the facts, for example:

- in a private treaty or where an auction doesn’t meet reserve, when a buyer and seller, orally or in writing, agree to the sale price of the property prior to the payment of any deposit or the exchange of any contracts;
- in an auction that meets reserve, at the point a buyer is successful at auction.

What happens when these principles are met?

If, and only if, both the ‘*who*’ and ‘*when*’ principles are met will the services you provide be Item 1 designated services.

This can include the planning or preparatory steps taken to facilitate a transfer, such as:

- preparing, reviewing, and lodging sale contracts and land transfer instruments;
- researching property titles, strata documents, or land use specifications;
- coordinating with financial institutions regarding payments and discharge of mortgage for the real estate transfer;
- holding funds on behalf of a buyer or seller and disbursing trust funds at settlement, or organising for release of deposit to the seller (which may also trigger Item 3, which involves holding money on trust—see below);²
- preparing for financial settlement;
- preparing documents to be provided to a registry authority for transfer of real estate on behalf of a client;
- preparing a contract for the sale of real estate.

What happens if these principles are not met?

If either or both of the ‘*who*’ and ‘*when*’ principles are not met, you will not be providing an Item 1 designated service.

This means that, even if you are providing services that satisfy the ‘*who*’ principle, you will not be providing a designated service unless and until the ‘*when*’ principle is also satisfied. As such, you can accept instructions to act for a client and act on those instructions, including by carrying out (some) of the preparatory services listed above, without those services being Item 1 designated services.

Once a transaction exists, however, you will be providing a designated service—but only from the point that the transaction exists.

Who is ‘the person’?

In the context of Item 1, the ‘*customer*’ is defined as ‘*the person*’, which means the client that you are providing the designated service to.

What does it mean to ‘otherwise act for or on behalf of’ a person in a transaction?

AUSTRAC’s Guidance outlines that ‘*otherwise acting*’ is a distinct action to ‘*assisting*’, but neither it, the Act, or the Explanatory Memorandum explains what the term means.

We think it should be understood in accordance with its plain, ordinary meaning, such that it is a broad residual category that encompasses all services you may provide to a person that would not constitute assisting them with planning or executing a transaction, but which are provided in relation to instructions to transfer ownership from one person to another.

In practice, there is unlikely be a meaningful practical distinction for lawyers between the concepts of ‘*assisting*’ and ‘*otherwise acting*’. This means that the service provided must

² Explanatory Memorandum, [360].

still be ‘sufficiently linked’ to the outcome of the transaction, which is to say that both the ‘who’ and ‘when’ principles outlined above must be satisfied.

What is a transaction for the sale, purchase, or other transfer of real estate?

What is a ‘transaction’?

The term ‘*transaction*’ is defined in section 5 as including transactions of a non-commercial nature. It does *not* include transfers that happen by operation of law, such as transfers by survivorship, as there is no transaction involved.

(However, while such transfers are not covered by the Regime, they are covered by the Electronic Conveyancing National Law.³ As such, if you are ‘*subscriber*’ authorised to use an electronic lodgement network to complete conveyancing transactions—which includes transfers by survivorship—you are required to comply with the Australian Registrars National Electronic Conveyancing Council’s Model Participation Rules,⁴ which require you to verify the identity of your client.)⁵

‘Transaction’ also does not include adverse possession or compulsory acquisition, which are also transfers by operation of law, or planning applications or subdivision of real estate—unless ownership of the real estate is being transferred to a third party.

The term can include spousal transfers for no consideration, for example, in relation to the principal place of residence from one spouse to another or from one spouse into joint names. A transaction to buy, sell or transfer property only exists when the ‘when’ principle discussed above is satisfied.

What does ‘or other transfer’ include?

This likely captures transfers of title where there is a change of custodian or a change in the trustee of the trust that holds the relevant real estate asset. These examples may not be accompanied by any change of beneficial ownership (i.e. the identity of the beneficiaries for whom the legal title is held by the custodian or trustee will not change as a consequence of the transfer).

What is ‘real estate’?

‘*Real estate*’ is defined in section 5 of the Act as:

- a fee simple interest in land in Australia;
- a leasehold interest in land in Australia;
- a land use entitlement in land in Australia;
- an interest, estate, right or entitlement in land in a foreign country that is equivalent to any of these interests, or which confers ownership rights on the holder of that interest, estate; right or entitlement;
- an interest prescribed by the regulations.

³ See definition of ‘*conveyancing transaction*’ in the *Electronic Conveyancing (Adoption of National Law) Act 2012* (NSW), Appendix Electronic Conveyancing National Law, section 3.

⁴ See, e.g., *Electronic Conveyancing (Adoption of National Law) Act 2012* (NSW), section 26(1).

⁵ Australian Registrars National Electronic Conveyancing Council’s Model Participation Rules, r 6.5.1.

It does not include the following:

- incorporeal hereditaments;
- the interests of a mortgagee;
- a leasehold interest under a lease for a term of 30 years or less, excluding options for further terms;
- any other interest, estate, right or entitlement in land in a foreign country that is equivalent to the above interests;
- an interest prescribed by the regulations;
- dwellings not attached to land, where the resident owns the dwelling but leases the land on which the dwelling is located (for example, caravan parks, and some retirement villages).

When will a sale, purchase, or other transfer be pursuant to, or resulting from, an order of a court or tribunal?

If you are providing a service in relation to a transaction for the sale, purchase, or other transfer of real estate, but the transfer is occurring pursuant to, or resulting from, a court or tribunal order, you will not be providing this designated service.

A transfer will be pursuant to or resulting from a court or tribunal order where it is required to occur to comply with, or give effect to, an order made by a court or tribunal.

According to the Explanatory Memorandum, this includes:⁶

- transfers of real estate from a deceased estate following a court-ordered grant of probate or letters of administration;
- transfers of real estate under family law consent orders or other court-ordered property settlement outcomes;
- a trustee in bankruptcy appointed by a court or the Australian Financial Security Authority to transfer a 'real estate' to a creditor;
- a registered liquidator appointed by a court to transfer a 'real estate' to a creditor.

Transfers that do not involve a court order *will be* a designated service (unless another exemption or exclusion applies). For example, transfers of real estate from a deceased estate that do **not** involve a court ordered grant of probate will be a designated service,

In addition, AUSTRAC considers that this carve out only applies to services carried out *after* the court order has been made. This means that services provided to obtain a court or tribunal order may be a designated service if they otherwise fall within the scope of the Items of Table 6.⁷

What does it mean to provide a service in the course of carrying on a business?

The AML/CTF Act does not define the term '*carrying on a business*'.

AUSTRAC's Guidance explains that it considers a business to be '*a venture or concern in trade or commerce*', which '*includes operations of a commercial character*'. Indicia of

⁶ Explanatory Memorandum, [359].

⁷ AUSTRAC, Guidance, '*Not pursuant to or resulting from a court or tribunal order (items 1 and 2)*'.

'commercial character' include the organisation of the entity's activities in a business-like manner, keeping of books and records, and using a system to keep books or records.⁸

A service can be provided in the course of carrying on a business even if it is only provided once, and can provided for a fee or for free to otherwise further that business.

The position in Queensland

In Queensland, it is usual for real estate agents to form the sale contract with the buyer and seller using standard form contracts. In this context the Queensland real estate agent will be undertaking the Table 6, Item 1 service in addition to the designated services in relation to 'broking' the sale of real estate.

For legal practitioners, the designated service in relation to Item 1 real estate sales will usually commence upon receipt of an executed contract of sale from one of the parties directly or their agent.

Vendor disclosure statements are often completed by legal practitioners on referral from a real estate agent, or seller. According to the 'when' principle, there would be no transaction at the point the statement is prepared in most cases as there is no buyer and seller and agreed price. While completing a vendor disclosure statement would not usually be a designated service, vendor solicitors should be alive to when a designated service commences if they are also preparing draft contractual documentation as well as vendor disclosure materials.

Examples

Example 1—Assisting to plan or execute a real estate transaction

Scenario 1

A lawyer provides a potential client wishing to sell real estate with general advice on the process for sale. The lawyer accepts instructions to act for the client and draws up a draft contract for sale.

Is the lawyer providing a designated service?

No, as no transaction yet exists.

Scenario 2

The client attends an auction as a buyer and is successful on the fall of the hammer, and instructs the lawyer to act on the purchase. A price is agreed.

Is the lawyer providing a designated service?

Yes, the client's lawyer is providing a designated service from the point at which the instructions are received, as there is a seller and a buyer.

⁸ AUSTRAC, Guidance, 'Provided in the course of carrying on a business (all items)'.

Scenario 3

The client attends an auction as a buyer, but the property is passed in or the sale is to be by private treaty. The client and the seller agree a price (orally or in writing).

Is the lawyer providing a designated service?

Yes, the client's lawyer is providing a designated services from the point at which at which the instructions are received as there is a seller and a buyer.

Scenario 4

Before settlement, the buyer expresses regret and instructs the following professionals to provide additional services:

- an accountant for financial advice on the implications of pulling out of the purchase;
- another lawyer for advice on the legal consequences of pulling out of the purchase.

Is the lawyer providing a designated service?

The client's original lawyer is still providing a designated service.

The accountant and the second lawyer are not providing a designated service, as the services they provide are not directly advancing the transaction.

Example 2—Advice about existing property

Scenario

A lawyer acting in a family law property settlement provides advice to the husband in relation to real estate that was purchased during the marriage.

Is the lawyer providing a designated service?

No, as there is no ongoing or future transaction at that point. The only relevant transaction (to purchase the property originally) has already been completed.

Example 3—lawyer helping client claim rights over a real estate transaction

Scenario 1

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

Is the lawyer providing a designated service?

No, as there is no ongoing or future transaction. The only relevant transaction (to purchase the property originally) has already been completed.

Scenario 2

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 orders being made.

Is the lawyer providing a designated service?

No, because:

- the ‘who’ principle is not satisfied: the advice does not directly advance the outcome, it 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;
- the ‘when’ principle is not satisfied: there is no transaction at this point;

Scenario 3

A consent order is made by a court for the transfer of the property, and the property is transferred to the client pursuant to that order.

Is the lawyer providing a designated service?

No, because of the court order exception.

Scenario 4

No court or tribunal order was made, and the property was instead transferred to the client pursuant to a binding financial agreement (**BFA**) agreed by the parties. The BFA was drafted and executed by the client’s lawyer, and the transfer effected by a conveyancer.

Is the lawyer providing a designated service?

No, the lawyer drafting and executing the BFA will not be an Item 1 designated service in this scenario as it is not sufficiently linked to the transaction because the lawyer is not directly advancing the transaction.

Is the conveyancer providing a designated service?

Yes, the conveyancer is providing a designated service: their services directly advance the transfer of the property pursuant to the BFA.

Example 4—transfer of a mobile home on land leased for less than 30 years

Scenario

A person owns a mobile home which is located on land in relation to which they have a lease of less than 30 years. The person retains a lawyer to get advice about moving their mobile home to another property and ending their lease.

Is the lawyer providing a designated service?

No: the mobile home is not real estate but a chattel, and this kind of lease is not caught by Item 1, so any services provided will not be a designated service.

Item 2: Transferring companies and other legal arrangements

You will provide an Item 2 designated service to a client in the following circumstances:

- you either:
 - assist a person in planning or executing a transaction; *or*
 - otherwise act for or on behalf of a person in a transaction; and
- the transaction is for the sale, purchase, or other transfer of a body corporate or other legal arrangement; and
- the sale, purchase, or other transfer is not pursuant to, or resulting from, an order of a court or tribunal; and
- you provide this service in the course of carrying on a business.

What does it mean to ‘assist’ a person in planning or executing a transaction, or to ‘otherwise act for or on behalf of’ a person in a transaction?

AUSTRAC interprets ‘assisting’ in the context of this Item in the same way that it interprets it in relation to Items 1, 4, and 6. This means that you will assist a person in the planning or execution of a transaction to sell, buy or otherwise transfer a body corporate or legal arrangement where you provide a service to that is ‘*sufficiently linked*’ to the transaction.⁹ The ‘who’ and the ‘when’ principle apply to determining whether a service is *sufficiently linked* to the transaction, such that:

- the services you provide must ‘*directly advance*’ the transaction, which means that they must constitute the taking of ‘*active steps that move the ... outcome forward*’; and
- the services must be provided in relation to a specific transaction that exists.

Who principle

This principle is met where the services you provide constitute active steps in the planning or execution of a transaction. This includes, for example:

- where you are the lawyer with primary carriage of a transaction and you undertake activities for a client; or
- where you provide advice to a client that is so comprehensive that they can effect the transfer on their own, without further professional assistance.

This principle is *not* met where the services you provide ‘*merely influence*’ whether the transaction will occur or not. This includes:

- providing purely advisory services, such as general advice on the transaction;
- providing ancillary services to another service provider who is directly advancing a transfer; for example, on a specific aspect of a transaction in progress.

⁹ AUSTRAC, Guidance, ‘Assisting or otherwise acting for or on behalf of a person when providing the professional services covered by items 1–4 and 6’.

When principle

The ‘when’ principle defines when a transaction exists and determines the point in time at which this designated service commences.

As is the case with Item 1, a designated service will only be provided once a transaction exists—but there are important differences in the application of this principle in the context of Item 2. A transaction exists in the context of Item 2 when you accept and act on instructions in relation to the transaction, and where two or more parties to the transaction exist, *and* a party commences negotiating with one or more other parties in relation to sale, purchase or transfer of the body corporate or the legal arrangement.

Once a transaction exists, the ‘planning steps’ of a transaction will be regulated—including preparing or reviewing contracts for sale, purchase or transfer of a body corporate or ‘legal arrangement’:¹⁰

- conducting or advising on due diligence, valuation of assets and liabilities in anticipation for a sale, purchase or transfer;
- obtaining Foreign Investment Review Board approvals (**FIRB**), Australian Securities Exchange, and Australian Securities and Investments Commission (**ASIC**) waivers for clients;
- conducting due diligence on accounts and finances for corporate financial transactions prior to a transaction;
- preparing for financial settlement; and
- preparing documents to be provided to an authority (such as ASIC) for transfer of a body corporate on behalf of a client.

What does it mean to ‘otherwise act’ in relation to this Item?

Again, we interpret the term ‘*otherwise acting*’ in the context of this Item in the same way that we interpret it in relation to [Item 1](#).

This means that we think it should be understood as a broad residual category that encompasses all services you may provide to a person that would not constitute assisting them organising, planning, or executing a transaction, but which are provided in relation to instructions to make a transaction for equity or debt financing relating to a body corporate or proposed body corporate, or a legal arrangement or proposed legal arrangement.

Who is ‘the person’?

In the context of Item 2, the ‘*customer*’ is defined as ‘*the person*’, who is the client you are providing the designated service to.

¹⁰ Explanatory Memorandum, [367].

What is a transaction for the sale, purchase, or other transfer of a body corporate or legal arrangement?

What kinds of transactions are regulated?

According to the Explanatory Memorandum, a transaction to buy, sell or transfer a body corporate or legal arrangement only exists for the purposes of Item 2 where the transaction involves the sale, purchase, or transfer of ownership rights that exceed the 25 per cent or more threshold required to be considered a 'beneficial owner'.¹¹ Accordingly, sales of shares and interests of less than 25 per cent are not covered by Item 2.

In addition, transactions are only regulated where your client is or will be a beneficial owner of the body corporate or legal arrangement as a result of the transaction.¹² This means that transactions involving the sale (etc) of the body corporate undertaken on your own behalf, or on behalf of your employer, are not regulated.¹³

Item 2 also does not regulate circumstances where only the assets of a business are sold. This is because Item 2 only applies where the transaction includes the transfer, or intended transfer, of a body corporate or legal arrangement, so acting in relation to the sale of business assets (such as equipment, contracts, and/or intellectual property) will not trigger this designated service.

What is a body corporate for the purposes of Item 2?

The term '*body corporate*' is not defined in the AML/CTF Act, but AUSTRAC's Reforms Guidance explains that it includes any legally incorporated entity that has legal personality, and that it includes all of the following:¹⁴

- companies;
- incorporated associations;
- incorporated limited partnerships; and
- corporations sole.

We also assume it includes corporations under the *Corporations (Aboriginal and Torres Strait Islander) Act 2006* (Cth), as such entities are not specifically excluded from the definition of the term in the context of this Item (cf Item 6).

What is a legal arrangement for the purposes of this Item?

A '*legal arrangement*' is defined in section 5 of the AML/CTF Act as an express trust, a partnership, a joint venture, an unincorporated association, or an arrangement including a foreign arrangement such as a fiducie, treuhand or fideicomiso, similar to any of the other referenced arrangements. This includes unit trusts and discretionary trusts.

¹¹ Explanatory Memorandum, [366].

¹² Explanatory Memorandum, [379].

¹³ Explanatory Memorandum, [379].

¹⁴ AUSTRAC, Guidance, '*Body corporate or legal arrangement (items 2, 4–5, 6–9)*'.

What does it mean for a sale, purchase, or transfer to be pursuant to, or resulting from, a court or tribunal order?

See commentary regarding [Item 1](#).

What does it mean to provide a service in the course of carrying on a business?

See commentary in relation to [Item 1](#).

Be aware that it does not matter whether the transfer is for value or not.¹⁵

Examples

Example 1—Selling, buying or transferring a legal arrangement or body corporate

Scenario 1

A lawyer is engaged to, and provides, tax advice to a client on the implications of selling a body corporate.

Is the lawyer providing a designated service?

No. Though the advice may be potentially influential to the client in deciding whether to sell the body corporate, it does not directly advance any a transaction, and there is no transaction yet in existence.

Scenario 2

The lawyer accepts further instructions from the client to sell the body corporate, and a specific buyer is identified.

Is the lawyer providing a designated service?

Yes, the designated service begins from the point that a specific buyer is identified.

Scenario 3

The lawyer accepts further instructions from the client to sell the body corporate, and many potential buyers are identified. Negotiations begin with one or more potential buyers.

Is the lawyer providing a designated service?

The lawyer starts providing a designated service from the point that negotiations begin with one or more potential buyers.

¹⁵ AUSTRAC, Guidance, 'Selling, buying or transferring a legal arrangement or body corporate'.

Item 3: Holding money, etc, on trust

You will provide an Item 3 designated service to a client if:

- you *either*:
 - assist a person in the planning or execution of a transaction; or
 - otherwise act for or on behalf of a person in a transaction; and
- as part of this service, you receive, hold, control (including disbursing), or manage a person's money, accounts, securities and securities accounts, virtual assets, or other property; and
- you do so in the course of carrying on a business; and
- none of the exceptions in subsections 6(5C) and 6(5D) apply.

Note on the scope of application of Item 3

While the Explanatory Memorandum states that businesses operating trust accounts will not be regulated under the AML/CTF Act purely for operating trust accounts in the absence of any other designated services,¹⁶ the drafting of Item 3 is convoluted, difficult to understand, and may not have achieved that outcome.

For this reason, you should navigate this Item, and especially the exclusions to the scope of the Item specified in subsections 6(5C) and 6(5D), very carefully: they may have significant consequences for whether your practice will or will not be required to comply with the AML/CTF regime, and whether particular services are designated services.

It is especially important that you are aware that whether your practice will provide any Item 3 designated services may depend on whether you provide any other designated services to *any* of your clients at a business level due to the '**reasonably incidental payments**' exclusion to Item 3 in section 6(5C)(b)(i) and (ii).

AUSTRAC has interpreted this exclusion to operate such that, if you do not provide any designated services to anyone at all in the course of operating your practice, you can hold or manage money (or other property) in a way that would otherwise be covered by Item 3, without being covered by the Item, if the money or property being held or managed is for payments '*reasonably incidental*' to the provision of a non-designated service.

If, on the other hand, you *do* provide other designated services to other clients, then you cannot avail yourself of this exclusion and any money (etc) you hold or manage in your trust account on behalf of a client for payments '*reasonably incidental*' to the provision of a non-designated service will be covered by Item 3 unless another exclusion applies, regardless of whether you are providing a designated service to that particular client.

A simple illustration of this is where an estates practice does not provide any designated services at all because all of its services involve the court order exemption. That practice could hold estate assets in trust for distribution pursuant to the will the subject of the probate order without that amounting to a designated service because it would be incidental to the non-designated service of administering the estate. However, if the practice also has a conveyancing arm, then section 6(5C)(b)(i) and (ii) will not apply and

¹⁶ Explanatory Memorandum, [372].

monies held in the trust account will (subject to the below) only be outside Item 3 if one of the other (more limited) exceptions in section 6(5C) apply.

If you cannot avail yourself of the reasonably incidental payments exclusion, you will need to consider whether you provide any services that are Item 3 designated services—which requires you to look at the other paragraphs of section 6(5C).

Interpretation of Item 3

There is some uncertainty about the scope of Item 3, as two interpretations appear open.

The first potential interpretation is that the Item requires the following:

- first, that the professional service provider provides services associated with a transaction of some kind; and
- second, that the professional service provider interacts with the client's money *as part of* providing the service assisting the person ... or otherwise acting for or on behalf of a person in the transaction.

The second possible interpretation is that the Item simply requires a professional service provider to provide services to a client that involves an interaction with the client's money, which involves a transaction.

The key difference between these two interpretations is that the former requires, for Item 3 to be engaged, that the professional service provider assists a client in relation to a transaction, *and then*, as part of assisting them in relation to that transaction, receives or holds the clients' money (or other property).

In contrast, the latter construction would mean that Item 3 is engaged where a professional service provider receives, holds, controls, or manages a person's money (etc), and assists them by doing something involving a transaction in relation to the money (etc)—no services related to assisting with an underlying transaction is required.

The first interpretation appears to be supported by the text of the Item¹⁷ and the Explanatory Memorandum, which relevantly explains that it is intended to '*...regulate a professional service provider who handles a person's property whilst acting for or assisting that person in a transaction*' (emphasis added), and that there are '*two determining factors*' for whether a service is an Item 3 designated service, the first being '*whether the professional service provider is providing the person with services that are associated with a transaction ...*', and the second being '*whether the professional service provider's*

¹⁷ Item 3 is defined in Table 6, section 6(5B) of the AML/CTF Act as:

Receiving, holding and controlling (including disbursing) or managing a person's

- (a) money; or*
- (b) accounts; or*
- (c) securities and securities accounts; or*
- (d) virtual assets; or*
- (e) other property;*

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)).

interaction with a person's property has an active element (that is, controlling, disbursing or managing).¹⁸

However, it is important to be aware that AUSTRAC's Guidance appears to adopt the latter construction.

Though AUSTRAC's Guidance on Item 3 includes a statement listing the elements of Item 3 that is consistent with the formulation in the Explanatory Memorandum,¹⁹ when read together with the example provided which illustrates the application of the Item, it appears that AUSTRAC is of the view that Item 3 is engaged where a professional service provider receives, holds, controls, or manages a person's money (etc), and assists them by doing something involving a transaction in relation to the money (etc), and that no services related to assisting with an underlying transaction is required.

This follows from the example provided in AUSTRAC's Guidance, which involves an accountant that is preparing accounts and tax returns for the owner of a small business, and who is then instructed to pay some expenses, including a business lease payment and school fees, for the client. The client transfers money to the accounting practice's bank account, which is used to make the payments. AUSTRAC's Guidance says that this is a designated service under Item 3 (unless an exemption applies).²⁰

This illustrates that AUSTRAC does not consider it necessary for you to be providing services to a client associated with a transaction of some kind, *and then*, separately, as part of providing that service, receiving, holding (etc) the client's money. Rather, AUSTRAC seems to interpret this Item as applying if you assist a client in relation to any service, and in the course of that, you accept money into your trust account that is not covered by an Item 3 exception.

When you are considering whether you provide any Item 3 designated services, it is prudent to keep in mind AUSTRAC's interpretation of it.

What does it mean to 'assist' a person in planning or executing a transaction?

AUSTRAC interprets '*assisting*' in the context of this Item in the same way that it interprets it in relation to Items 1, 2, 4, and 6. This means that the service you provide must be '*sufficiently linked*' to the outcome of the designated service, who' and the 'when' principle, discussed in relation to Item 1, apply.

As discussed above, AUSTRAC is of the view that you will assist a person in relation to the Item 3 designated service where you provide a service to a client that involves assisting them with planning or executing a transaction, and as part of providing that service, you receive, hold, control (including disbursing), or manage a person's money, accounts, securities and securities accounts, virtual assets, or other property.

¹⁸ Explanatory Memorandum, [368] – [369].

¹⁹ AUSTRAC, Guidance. 'Receiving, holding, controlling or managing a person's property'.

²⁰ AUSTRAC, Guidance, '*How item 3 applies to money or other property*'.

What does it mean to ‘otherwise act’ in relation to this Item?

Again, we interpret the term ‘*otherwise acting*’ in the context of this Item in the same way that we interpret it in relation to [Item 1](#). This means that we think it should be understood to encompass all services you may provide to a person that would not constitute planning or executing a transaction, but which are provided in relation to instructions to make a transaction which involves you receiving, holding, controlling, disbursing or managing the client’s money.

What is a ‘transaction’ for the purposes of Item 3?

The term ‘*[t]ransaction*’ has a broad meaning in the context of Item 3: unlike the other Table 6 designated services in which it appears, its scope is not confined to certain kinds of transactions (for example, transactions in relation to real estate), and it includes, per section 5 of the AML/CTF Act, ‘*transaction[s] of a non-commercial nature*’.

Importantly, there must be a transaction in existence for this Item to be provided. AUSTRAC appears to be of the view that paying money from a trust account constitutes a transaction of the requisite kind.

What does it mean to receive, hold, control (including disbursing), or manage a person’s money, accounts, securities and securities accounts, virtual assets, or other property?

The AML/CTF does not define the terms ‘receive’ or ‘hold’ for the purposes of Item 3, and though section 11 does include a definition of the term ‘control’, the definition is not relevant to Item 3. AUSTRAC’s Guidance explains that it considers the concepts of receiving, holding and controlling money (etc) should be read together as a composite concept, and that the concept of ‘*managing*’ is separate.²¹

Receiving, holding, and controlling (including disbursing)

AUSTRAC’s Guidance states that you will provide an Item 3 designated service where you handle your client’s money, accounts, securities or securities accounts, virtual assets, or other property as part of assisting them or otherwise acting for them in a transaction, including where you receive and hold a client’s funds within your trust account on your client’s behalf, where you have control over the disbursement of those funds.

The Explanatory Memorandum explains that this includes:²²

- where you hold sale proceeds or purchase funds for your client in escrow;
- where you hold money or property prior to it being settled as trust property on the creation of an express trust; and
- where you have authority over a client’s bank account and makes payments from that account on behalf of a client, for example, to make loan repayments to a financial institution.

²¹ AUSTRAC, Guidance, ‘*How item 3 applies to money or other property*’.

²² Explanatory Memorandum, [369].

If you do not receive, hold, or control the client's money or other property, you will not be providing this designated service—unless you are able to influence or direct a transfer, which may amount to *'managing'*.²³

Section 153 of the Uniform Law also includes a useful definition of *'When, how and where money is received'*, which provides that, for the purposes of the Uniform Law:

- (1) ... a law practice receives money when—
 - (a) the law practice obtains possession or control of it directly; or
 - (b) the law practice obtains possession or control of it indirectly as a result of its delivery to an associate of the law practice; or
 - (c) the law practice, or an associate of the law practice (otherwise than in a private and personal capacity), is given a power or authority to deal with the money for or on behalf of another person.

Managing

The term *'managing'* is not defined in the AML/CTF Act. AUSTRAC's Guidance explains that it understands the concept of *'managing'* to involve *'deciding, administering or directing how a person's money or property is dealt with'*. AUSTRAC is of the view that you do not need to receive or hold any property for this to occur.²⁴

AUSTRAC considers it *'more likely'* that you will be managing a person's money or other property if you have authority and discretion to decide what should happen to that money or other property, including by:

- deciding whether to make a payment;
- changing who is paid or what is transferred;
- redirecting funds, substituting parties, or materially varying the purpose of a dealing.

In contrast AUSTRAC considers it less likely that you will be *'managing'* if your role in relation to the money (etc) is confined to transmitting or implementing fixed or pre-determined, binding instructions and you do not have authority or discretion to redirect funds, substitute beneficiaries, or materially vary the purpose of the dealing.

It is unlikely that legal professionals will *'manage'* money, though possible examples may include where a lawyer is acting under a Power of Attorney, where a lawyer is acting as an executor for a deceased estate, or where a lawyer is managing a person's estate where there is no grant of probate.

Who is the 'customer'?

Though the *'customer'* is defined as *'the person'* in the context of Item 3, difficulties could arise for lawyers in identifying who this may be because lawyers may receive, hold, or control (including disbursing) money (etc) from *'a person'* who is not their client.

Notably, lawyers may hold money from a counterparty to a transaction as part of providing a designated service to their client—for example, in escrow situations a lawyer may hold

²³ AUSTRAC, Guidance, *'Receiving, holding and controlling (including disbursing) money or other property'*.

²⁴ AUSTRAC, Guidance, *'Managing money or other property'*.

monies on behalf of a client *and* a counterparty, in relation to whom the lawyer does not act but could potentially be ‘*assisting*’.

Fortunately, AUSTRAC’s Guidance explains that the customer of this designated service is ‘*the person you’re providing the professional service to. Specifically, it’s the person you’re directly assisting or acting on behalf of in relation to the transaction*’, and that a person—for example, a counterparty—will not become a customer merely because ‘their money passes through your account as part of a transaction in which you are acting for someone else.’ This means that, if you hold a counterparty’s money in your trust account in escrow pursuant to a contractual agreement, the counterparty is not your customer and you will not owe AML/CTF obligations in relation to them.²⁵ (You will of course continue to owe the usual regulatory and contractual obligations to the counterparty in relation to any escrow funds you hold.)

What does it mean to provide a service in the course of carrying on a business?

See commentary in relation to [Item 1](#).

What are the exceptions in subsections 6(5C) and 6(5D)?

Item 3 does not apply in the circumstances covered by subsections 6(5C) and 6(5D) of the AML/CTF Act, which must be very carefully navigated.

In summary, the Item 3 designated service does not include any of the following:

- **Payment for goods or services:** money or other property being held or managed is payment for goods or services you provide;²⁶
- **Payments reasonably incidental to a non-designated service:** the money (etc) being held or managed is for payments reasonably incidental to the provision by the business of a service that is not a designated service, and you don’t provide any other designated services;²⁷
- **Payments pursuant to court or tribunal orders:** the money or other property being held or managed is to be received or payable under an order of a court or tribunal;²⁸
- **Certain specific payments:** the service is the receipt or disbursement of a payment from a government body, a court or tribunal of the Commonwealth, a State, a Territory or a foreign country, a public international organisation, or a person licensed under a Commonwealth, State or Territory law to provide insurance (including self-insured licensees);²⁹
- **Service is any other designated service:** the service you provide is covered by another designated service;³⁰ or
- **Circumstances specified in the AML/CTF Rules:** the AML/CTF Rules specify a circumstances where Item 3 does not apply.³¹

²⁵ AUSTRAC, Guidance, ‘*Receiving, holding, controlling or managing a person’s property*’.

²⁶ AML/CTF Act, section 6(5C)(a).

²⁷ AML/CTF Act, section 6(5C)(b).

²⁸ AML/CTF Act, section 6(5C)(c).

²⁹ AML/CTF Act, section 6(5C)(d), 6(5D).

³⁰ AML/CTF Act, section 6(5C)(e).

³¹ AML/CTF Act, section 6(5C)(f).

Payment for goods or services exception

The exception to Item 3 for payments for goods or services mean that you will not provide a designated service purely for receiving and holding client money and property into your trust account as payment for your professional fees and disbursements, and to make disbursements.³²

This includes:

- a payment to a barrister for representing a client in a legal proceeding;³³ and
- payments to an expert witness consultant or supplier that is retained by a legal practitioner on behalf of a client in connection with legal services which are not designated services.³⁴

Payments reasonably incidental to a non-designated service

For this exception to apply, the following criteria must be met:

- at a business level, your practice must not provide any other designated services; and
- the money or other property being held or managed is for payments reasonably incidental to providing a service that is not a designated service.

As set out above, this means that this exception is only available if your entire practice does not provide any designated services—in which case, you will not be a reporting entity and so long as you continue to satisfy the criteria of this exception.

If your practice also provides designated services, however, then you cannot avail yourself of this exception. This means that any services you provide to a client that satisfy the requirements of Item 3, and which do not fall within one of the other exceptions, will be designated services, even if the payment is reasonably incidental to the provision of a non-designated service.

Payments pursuant to court or tribunal orders exception

This includes, for example, ‘where a solicitor uses their trust account to receive a judgment sum from the opposing party to litigation, and then sends on the judgment sum to their client’s bank account’.³⁵

Service is any other designated service exception

This may include, for example, holding a buyer’s deposit in your trust account in the course of providing an Item 1 designated service to your client, the seller.

Certain payments exception

Item 3 does not apply where you receive or disburse money or other property as a payment to or from a government body, a court or tribunal of the Commonwealth, a State, a Territory or a foreign country, a public international organisation, or a person licensed

³² Explanatory Memorandum, [372].

³³ Explanatory Memorandum, [370].

³⁴ Explanatory Memorandum, [370].

³⁵ Explanatory Memorandum, [370].

under a Commonwealth, State or Territory law to provide insurance (including self-insured licensees). This can include:³⁶

- a payment to a court to pay court filing fees, or fees paid to ASIC for filings, applications, or exemptions;
- bail payments made to a court or tribunal, including payments made by a surety through a legal practitioner's trust account;
- compensation paid by an insurer to a client through a law practice's trust account;
- a payment to or from any an Australian or foreign government body (for example, Launceston City Council, the Australian Taxation Office (**ATO**), or the United States Patent and Trademark Office); and
- payments received by a personal injury legal practitioner from an insurer, such as Comcover or AAI Limited, to pay to their client.

Circumstances specified in the AML/CTF Rules

The AML/CTF Rules specify circumstances where item 3 does not apply. For example, the Rules specify that item 3 does not apply where a real estate agency manages rental income and expenses through its trust account.

Examples

Example 1—Litigation practice holding settlement funds in escrow

Scenario 1

A legal practice that provides litigation advocacy services *only* receives settlement funds into its trust account under privately negotiated settlement agreements, which are typically reached without a court order. The practice holds the funds in escrow and releases them to clients when the conditions in the settlement agreement are met.

Is a designated service being provided?

No. While the practice is holding the client's money, the funds are reasonably incidental to providing non-designated services, so the section 6(5C)(b) exception applies.

Scenario 2

The legal practice also provides conveyancing services, in addition to litigation advocacy services. It receives settlement funds into its trust account under a privately negotiated settlement agreement reached without a court order, holds the funds in escrow, and then releases them to a client when the conditions in the settlement agreement are met.

Is a designated service being provided?

Yes, unless another exception applies.

³⁶ Explanatory Memorandum, [370].

Item 4: Equity and debt financing

You will provide the Item 4 designated service if:

- you *either*:
 - assist a person in organising, planning, or executing a transaction; *or*
 - you otherwise act for or on behalf of a person, in a transaction; and
- the transaction is for equity or debt financing relating to a body corporate or proposed body corporate, or a legal arrangement or proposed legal arrangement; and
- you provide the service in the course of carrying on a business.

What does it mean to ‘assist’ a person in relation to this Item?

AUSTRAC interprets ‘assisting’ in the context of this Item in the same way that it interprets the term in relation to [Item 1](#).

This means that you will assist a person in the organising, planning, or execution of a transaction for equity or debt financing relating to a body corporate or proposed body corporate, or a legal arrangement or proposed legal arrangement, where you provide a service to that is ‘*sufficiently linked*’ to the transaction.³⁷ The ‘who’ and the ‘when’ principle apply to determining whether a service is *sufficiently linked* to the transaction.

This means that:

- The services you provide must ‘*directly advance*’ the transaction, which means that they must constitute the taking of ‘*active steps that move the ... outcome forward*’; and
- The services must be provided in relation to a specific transaction that exists.

Who principle

This principle is met where the services you provide constitute active steps in achieving a transaction. This includes, for example, where you are the lawyer with primary carriage of a transaction and you undertake activities for a client such as structuring, negotiating and documenting equity contribution or debt financing transactions, and advising on compliance with the ASX Listing Rules and continuous disclosure obligations in relation to a transaction—*provided that the when principle is also satisfied*.

This principle is *not* met where the services you provide ‘*merely influence*’ whether the transaction will occur or not. This includes:

- providing purely advisory services, such a general advice on equity and debt financing;
- providing ancillary services to another service provider who is directly advancing a transfer; for example, on a specific aspect of a transaction in progress; and
- the provision of a Solicitor’s Certificate confirming a client has received independent legal advice regarding the obligations, risks, and consequences of being a guarantor of a loan.

³⁷ AUSTRAC, Guidance.

Because Item 4 refers to a ‘*proposed*’ body corporate and legal arrangement, and as it includes *organising* transactions, this designated service may begin before an entity exists.

When principle

Again, the ‘when’ principle defines when a transaction exists and determines the point in time at which this designated service commences—but this principle has a specific application in the context of this designated service.

A transaction exists in the context of Item 4 when you accept and act on instructions and directly advance a transaction by, for example, identifying potential investors or funders and leading the process of securing equity or debt financing from them.³⁸

What does it mean to ‘otherwise act’ in relation to this Item?

In the absence of AUSTRAC Guidance on this specific point, we interpret the term ‘*otherwise acting*’ in the context of this Item in the same way that we interpret it in relation to Items 1, 2, and 3.

What is a transaction for equity or debt financing relating to a body corporate or legal arrangement, or proposed body corporate or legal arrangement?

What is equity or debt financing?

According to the Explanatory Memorandum, ‘*Equity or debt financing*’ refers to all capital and debt raising methods, including but not limited to:³⁹

- equity capital raising, for example, initial public offerings, venture capital, share purchase plans, rights issues, and block trades.
- debt financing, including the following whether secured or unsecured: bonds, bills or notes, asset financing, loans, including government loans, and debentures.

What is a legal arrangement or proposed legal arrangement?

‘Legal arrangement’ is defined in section 5 of the Act to mean:

- express trusts;
- partnerships;
- joint ventures;
- unincorporated associations; or
- arrangements, including a foreign arrangement such as a fiducie, treuhand or fideicomiso, that are similar to the above arrangements.

This means that you will provide this designated service if you assist a client to organise, plan, or execute a transaction, or otherwise act for or on behalf of a person in a transaction, for equity or debt financing relating to any of these legal arrangements—or in relation to any *proposed* legal arrangements of these kinds.

³⁸ AUSTRAC Reforms Guidance, ‘*Assisting or otherwise acting for or on behalf of a person when providing the professional services covered by Items 1–4 and 6*’.

³⁹ Explanatory Memorandum, [375].

You will *not* provide this designated service by providing services in relation to a transaction for equity or debt financing relating to the following kinds of legal arrangement:

- trusts created by operation of law; and
- testamentary trusts.

What does it mean to provide a service in the course of carrying on a business?

Refer to the commentary regarding [Item 1](#).

Examples

Example 1—Equity or debt financing for a body corporate or legal arrangement

Scenario 1

A lawyer is approached by a client who asks about the steps to fund a startup company (a body corporate). The lawyer provides general advice about various financing options, including equity and debt financing, but doesn't directly assist in organising, planning or executing a **specific** financing transaction.

Is the lawyer providing a designated service?

No, the lawyer isn't providing a designated service under item 4, as:

- there is no transaction at this point; and
- they are not directly advancing a transaction to secure equity and debt financing for the company.

Scenario 2

The client then identifies several potential investors who are likely to fund the start-up company. The client retains the lawyer to lead the process to secure equity and debt financing from them.

Is the lawyer providing a designated service?

Yes, the lawyer will start to provide a designated service when they accept and act on the client's instructions to lead the process to secure debt/equity financing. The subsequent acts of negotiating, structuring and executing a financing deal or the drafting of debt or equity finance documents will all be captured by the designated service.

Scenario 3

The client then identifies several potential investors who are likely to fund the start-up company. The client retains the lawyer to lead the negotiations to secure equity and debt financing from them. The lawyer organises a third-party credit rating agency to credit rate the company. The credit rating agency isn't providing a designated service as its credit rating service influences but doesn't directly advance the transaction.

Is the lawyer providing a designated service?

Yes, the lawyer is still providing a designated service.

Is the credit-rating agency providing a designated service?

The credit rating agency is not providing a designated service as its credit rating service influences but doesn't directly advance the transaction.

Item 5: Transferring shelf companies

You will provide the Item 5 designated service if you:

- you sell or transfer a shelf company
- in the course of carrying on a business
- to a customer (the buyer or transferee).

What is a shelf company?

A shelf company is a company that has a legal existence, but which has not engaged in any business activity.⁴⁰

They are considered to pose a significant money laundering and terrorism financing risk as they can be used to obscure the true ownership of assets.

What does this designated service capture?

According to the Explanatory Memorandum, this designated service applies where a professional service provider (such as a lawyer) directly transfers or sells the body corporate in question. This contrasts with the Item 2 designated service, which regulates professionals when they assist another person to create or execute a transaction to sell, buy or transfer a body corporate, and Item 6, which regulates professionals when they assist a person to plan or execute or otherwise act for a customer to create or restructure a body corporate or legal arrangement.

What does it mean to provide a service in the course of carrying on a business?

See commentary in relation to [Item 1](#).

⁴⁰ Explanatory Memorandum, [377].

Item 6: Creating and restructuring companies

You will provide the Item 6 designated service if:

- you either:
 - assist a person to plan or execute the creation or restructuring of a body corporate or a legal arrangement; or
 - you otherwise act on behalf of a person in relation to the creation or restructuring of a body corporate or a legal arrangement; and
- the corporation is not a corporation under the *Corporations (Aboriginal and Torres Strait Islander) Act 2006* (Cth); and
- you do so in the course of carrying on a business.

What does it mean to ‘assist’ a person in relation to this Item?

AUSTRAC interprets ‘assisting’ in the context of Item 6 the same way that it does in relation to Items 1–4, [outlined above](#).

This means that that you will assist a person with planning or executing the creation or restructuring of a body corporate or legal arrangement for the purposes of Item 6 where you provide them with legal services that are *sufficiently linked* to the outcome of either creating, or restructuring, a body corporate or legal arrangement.⁴¹ Legal services will be sufficiently connected to these outcomes where they ‘*directly advance*’ them, which requires that they involve the taking of ‘*active steps that move the ... outcome forward*’.

The provision of services that do not directly advance the creation or restructuring a body corporate or legal arrangement are thus *not* an Item 6 designated service. This includes, for example:

- services provided in relation to an outcome that has already been achieved—such as advice about whether the creation or restructuring of a body corporate or legal arrangement was lawful. (This is because the service provided cannot contribute to the completion of the outcome, as the outcome has already occurred.)
- purely advisory services, such as:
 - advice about the benefits of creating or restructuring a body corporate or legal arrangement, or about how that might be done;
 - advice on the structure of a body corporate and the transfer of ownership;
 - advice regarding the disposition of the companies and trusts that are part of a property pool in family law property matters;
 - advice about directors’ duties.

⁴¹ AUSTRAC, Reforms Guidance, ‘Assisting or otherwise acting for or on behalf of a person when providing the professional services covered by Items 1–4 and 6’

The designated service will commence when you move beyond general advice and begin taking active steps to realise the outcome. This will usually occur when:

- you have identified a particular way for the body corporate or legal arrangement to be structured or created;
- the client instructs you to proceed; and
- you act on those instructions by taking steps that directly advance the creation or restructuring.

What does it mean to ‘otherwise act’ for a client in relation to this Item?

Again, in the absence of AUSTRAC Guidance on this specific point, we interpret the term ‘*otherwise acting*’ in the context of this Item in the same way that we interpret it in relation to Items 1, 2, and 6.

An example may exist in the preparation of prenuptial agreements or business succession plans that specify what is to happen to a business owner’s share in the event that they pass away or exit a business.

What does it mean to plan or execute the creation of an entity?

You will plan and/or execute the creation of an entity where you deliver legal services that bring a corporate entity or legal arrangement into existence (provided that the ‘who’ and ‘when’ principles are satisfied).

This can include preparatory steps taken to create or restructure the corporation or legal arrangement, such as acting on instructions to incorporate a company, prepare establishment documents, or otherwise implement the agreed structure, such as:⁴²

- drafting, reviewing and negotiating corporate agreements and business documents, including company constitutions, partnership agreements, shareholders agreements, corporate trustees and insolvency agreements;
- drafting and reviewing trust deeds and documents, such as preparing a deed for a family trust, a bare trust or other asset protection arrangements using legal structures;
- drafting, reviewing and negotiating documents to support a customer’s mergers and acquisitions, as well as proposed mergers and acquisitions;
- making applications to, and lodging forms with, ASIC for registering a company or a business name;
- obtaining FIRB, approvals, and ASX and ASIC waivers for clients;
- conducting due diligence on accounts and finances for corporate financial transactions prior to a transaction.

⁴² Explanatory Memorandum, [381].

What does it mean to plan or execute the restructuring of an entity?

Mere advice about the benefits of restructuring a body corporate or legal arrangement, or about how a restructure might be carried out, will not be sufficiently linked to the restructuring outcome without more.

The designated service will generally commence once you move beyond general advice and begin taking active steps to implement the restructure. This will usually occur when:

- you have identified a particular way for the body corporate or legal arrangement to be restructured;
- the client instructs you to proceed; and
- you act on those instructions by taking steps that directly advance the restructure.

Once those steps begin, both the ‘who’ and ‘when’ principles will generally be satisfied, and the Item 6 designated service will commence.

Examples of restructuring steps include:

- changing a company limited by guarantee into a company limited by shares;
- splitting one body corporate into multiple bodies corporate; and
- merging multiple bodies corporate.⁴³

AUSTRAC considers that restructuring does not encompass changes to other aspects of a body corporate or legal arrangement, such as its staffing profile, internal systems, or to debt restructuring for small businesses under the *Corporations Act 2001* (Cth).

It also would not cover amendments to a trust deed that do not change its legal structure, for example, by inserting a new appointor / successor / beneficiary. For example, a business succession lawyer who amends a family trust deed to amend the beneficiaries will not be providing a designated service.

What kinds of entity does this Item apply to?

Body corporates

Item 6 includes services provided to both corporations and legal arrangements, subject to the following caveats.

Item 6 does not include services provided in relation to corporations created under the *Corporations (Aboriginal and Torres Strait Islander) Act 2006* (Cth).

It does include all other kinds of legally incorporated entities that have legal personality, including companies, incorporated associations, incorporated limited partnerships, corporations sole, and shelf companies.

⁴³ AUSTRAC, Guidance, ‘Assisting or otherwise acting for or on behalf of a person when providing the professional services covered by Items 1–4 and 6’; Explanatory Memorandum, [381].

Legal arrangements

You will provide this designated service if you assist a client to plan or execute the creation or restructuring of any of the legal arrangements mentioned [in Item 4](#), or if you otherwise act on behalf of a client in relation to the creation or restructuring of a body corporate of any of these arrangements.

You will *not* provide this designated service by providing services in relation to the creation or restructuring of the following arrangements:

- trusts created by operation of law (i.e., trusts that are not created intentionally or in writing);
- testamentary trusts (the drafting of a will, and the subsequent creation of a testamentary trust, does not constitute a designated service).

What does it mean to provide a service in the course of carrying on a business?

See commentary in relation to [Item 1](#).

Who is the ‘customer’ of this designated service?

The AML/CTF Act defines the customer of this designated service to be both ‘the person’—i.e., the client who is providing you with instructions—*and*:

- If the service is creating or restructuring a company—the beneficial owners and directors of the company;
- If the service is the creation of an express trust—the proposed trustee, proposed settlor and proposed beneficiaries of the trust.

Examples

Example 1—Establishment a trust

Scenario 1

A financial adviser is approached by a client seeking to establish an SMSF.

The financial adviser:

- provides financial advice on the benefits of an SMSF and an SMSF investment strategy
- explains the steps the person needs to take to set up a SMSF, including general advice on the steps needed to create a trust
- recommends the client engage a lawyer to prepare the trust deed.

The client agrees to the financial adviser’s recommendations. The financial adviser introduces the client to a lawyer and instructs the lawyer 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 by helping the client to complete the rollover forms required
- arranges SMSF investments by helping the client to fill in the application form.

Is the financial advisor providing the Item 6 designated service?

No, because they are not directly advancing the establishment of the trust. The general advice they provided merely influenced the creation of the trust and was not sufficient to allow the client to create the trust themselves. In contrast, if they had provided advice that was comprehensive enough to allow their client to create the trust independent of any further professional assistance, then they would be providing this designated service.

However, the financial advisor may provide an item 54, table 1 designated service as this may amount to 'making arrangements' for another person to act.⁴⁴

Scenario 2

A lawyer is approached by a client seeking to establish an SMSF on the advice of a financial adviser. They accept instructions to set up the trust, and then:

- drafts a trust deed; and
- draws up paperwork necessary to appoint trustees and assign beneficiaries

Is the lawyer providing an Item 6 designated service?

Yes. By drafting and facilitating the execution of the trust deed they are directly advancing the creation of the trust.

The lawyer will start to provide this designated service once they accept the client's instruction to create the trust and act upon them.

Example 2: Creating or restructuring a body corporate or legal arrangement

Scenario 1

An insolvency lawyer is retained to, and provide necessary legal services to, change a company limited by guarantee into a company limited by shares, splitting one body corporate into multiple bodies corporate or merging multiple bodies corporate.

Is the lawyer providing a designated service?

Yes, because the services provided directly advance the restructure of a body corporate.

Scenario 2

The insolvency lawyer accepts new instructions from the same client in relation to another company. The client's instructions are to provide advice regarding how best to restructure the company's internal governance and business operations, including potential redundancies. The lawyer provides the advice, which the client acts on.

Is the lawyer providing a designated service?

No, because the advice provided does not concern the legal structure of the company.

⁴⁴ AML/CTF Act, s 6, Table 1, Item 54: 'in the capacity of holder of an Australian financial services licence, making arrangements for a person to receive a designated service (other than a service covered by this Item)'.

Item 7: Acting in, or appointing people to act in, certain positions

You will provide the Item 7 designated service if:

- you *either* act in a certain position, or arrange for another person to act in a certain position; and
- the position is any of the following:
 - director or secretary of a company
 - a power of attorney of a body corporate or legal arrangement
 - a partner in a partnership
 - a trustee of an express trust
 - any position in any other legal arrangement that is functionally equivalent to these positions; and
- you do so on behalf of a client; and
- none of the exceptions in subsection 6(5E) apply; and
- you do so in course of carrying on a business.

What does it mean to ‘act’ in a position?

You will act in one of these positions where you are formally appointed to any of the roles, and where you are acting in the role *on behalf of* your client. This means that, for this designated service to be provided, your client must retain control over the appointee’s fulfilment of duties and responsibilities, who acts on the client’s wishes and instructions.⁴⁵

You will not provide this designated service where you are appointed to a role in which you possess, and are expected to exercise, independent decision-making authority to fulfil the roles’ duties and responsibilities without the client’s oversight or influence.

AUSTRAC considers that you will not act in one of these roles if you are only a filing agent, nominee, representative, or service provider carrying out administrative or procedural steps. Further, AUSTRAC considers that this Item does not capture ordinary agent-principal relationships, *‘including where a person acts on instructions without assuming control, authority or fiduciary responsibility.’*⁴⁶

AUSTRAC considers that this designated service includes the preparatory or planning steps required to facilitate acting in the role, including preparing necessary documents, such as drafting a power of attorney for a corporation.

What does it mean to arrange for someone else to act?

You will arrange for another person to act in one of these roles where you facilitate their appointment into one of these roles *on behalf of your client*. This includes, for example, coming to an agreement or understanding for the person to act in role, and again, it includes any preparatory or planning steps taken to facilitate an appointment, including drafting or amending documents authorising the appointment, and identifying a person to be act in the role.⁴⁷

⁴⁵ Explanatory Memorandum, [387].

⁴⁶ AUSTRAC, Guidance, *‘Acting or arranging for a person to act in certain positions’*.

⁴⁷ Explanatory Memorandum, [392]-[394].

What positions are not within the scope of this Item?

The scope of Item 7 *does not* include:

- acting as a director in a personal capacity, not as a nominee;
- genuine appointments of individuals to roles, where the appointee is expected to fulfil duties and responsibilities with independent decision-making authority (excluding, for example, recruitment businesses that assist body corporates to engage executive directors are not regulated);⁴⁸
- acting as an executor under a will pursuant to a grant of probate;
- acting as a Trustee for Sale appointed by the Court;
- acting as a power of attorney of a natural person;⁴⁹
- acting as a trustee of your own family trust;⁵⁰ and
- acting as trustee of a testamentary trusts or trusts not created in writing.

There are also the following exceptions in subsection 6(5E) to the scope of Item 7:

- 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—including, for example:⁵¹
 - where a person is appointed as a registered liquidator over an insolvent company;
 - where a trustee company or public trustee manages the financial affairs of a person with a decision-making disability.
- acting as the trustee of a regulated debtor's estate (within the meaning of Schedule 2 to the *Bankruptcy Act 1966* (Cth)—including bankrupt estates, estates of a debtor under a personal insolvency agreement, and the estate of a person whose property is subject to control under Division 2 of Part VI of that Act;
- any circumstance specified in the AML/CTF Rules.

What does 'any position in any other legal arrangement that is functionally equivalent to these positions' mean?

AUSTRAC is of the view that the term 'any other legal arrangement' refers to 'arrangements that are equivalent in substance to trusts or similar structures, including foreign trust-like arrangements'.⁵²

A position in any of these other legal arrangements will be 'functionally equivalent' to the roles in Item 7 where it involves the client retaining control over the appointee's fulfilment of duties and responsibilities, for example, 'equivalent to a trust to a trustee, for example, a *fiduciaire* of a *fiducie* estate, or a *mutawalli* (manager or superintendent) of a *Waqf*'.⁵³

What does it mean to provide a service in the course of carrying on a business?

See commentary in relation to [Item 1](#).

⁴⁸ Explanatory Memorandum, [388].

⁴⁹ Explanatory Memorandum, [389].

⁵⁰ Explanatory Memorandum, [389].

⁵¹ Explanatory Memorandum, [391].

⁵² AUSTRAC, Guidance, 'Acting or arranging for a person to act in certain positions'.

⁵³ Explanatory Memorandum, [390].

Item 8: Acting, or arranging for another to act as, a nominee shareholder

You will provide the Item 8 designated service if:

- you *either* act as, or you arrange for another person to act as, a nominee shareholder of a body corporate or legal arrangement;
- you do so on behalf of a client; and
- in the course of carrying on a business.

What is a nominee shareholder?

'*Nominee shareholder*' is defined in section 5 of the AML/CTF Act as a person who holds shares in a body corporate or '*legal arrangement*' on behalf of another person (the nominator), and exercises voting rights associated with the shares according to the instructions of the nominator, or receives dividends on behalf of the nominator, or both.

The nominator retains control over the nominee's fulfilment of duties and responsibilities, and the nominee acts on the wishes and instructions of the client/nominator.

What does it mean to 'act as' a nominee shareholder?

You will be 'acting as' a nominee shareholder on behalf of your client if you agree to act as a nominee shareholder of a body corporate or legal arrangement on behalf of your client, when you are appointed to act in this role.

AUSTRAC considers that this includes the preparatory or planning steps that you take to facilitate your acting in the role, including by preparing necessary documents.

What does it mean to arrange for another person to act as a nominee shareholder?

You will arrange for another person to act as a nominee shareholder on your client's behalf where you facilitate their formal appointment to the role of nominee shareholder. For example, you will be 'arranging' for another person to act where you come to an agreement or understanding with them for them to perform the role on behalf of your client.

AUSTRAC considers that this designated service includes the preparatory or planning steps that you take to facilitate the person acting in the role, including, for example, by drafting or amending documents authorising a nominee shareholder for the nominator, and by identifying a person to be act as 'nominee shareholder' for the nominator.⁵⁴

What is a 'legal arrangement'?

An explanation of the meaning of '*legal arrangement*' is available [here](#).

What does it mean to provide a service in the course of carrying on a business?

See commentary in relation to [Item 1](#).

⁵⁴ Explanatory Memorandum, [392]-[394].

Item 9: Providing a registered office or principal place of business address to a company

Item 9 is straightforward—you will provide this designated service if:

- you provide a registered office address or principal place of business address to a company or a legal arrangement; and
- you do so in the course of carrying on a business.

When will you provide this designated service?

You will provide this designated service if you provide a client that is a legal arrangement or a company with a business address to use and notify to ASIC in lieu of a genuine office address, including by providing equivalent addresses outside Australia.

You will *not* provide this designated service if you lease out or otherwise provide office accommodation for a client that is a legal arrangement or company for it to use and occupy as its principal business address

What is a ‘legal arrangement’?

An explanation of the meaning of ‘*legal arrangement*’ is available [here](#).

What is a ‘registered office address’?

According to the Explanatory Memorandum, the meaning of ‘*registered office address*’ is intended to align with the term’s meaning in the *Business Names Registration Act 2011* (Cth), the *Corporations Act 2001* (Cth), and equivalent State, Territory and foreign jurisdiction legislation.⁵⁵

Neither of the Acts specifically referred to define the term, but sections 142–146 of the *Corporations Act 2001* (Cth) provides that companies must have a registered office in Australia that they either occupy or have the occupier’s consent to use as its registered office. ASIC Guidance on Company Addresses explains that a registered office address ‘*must be a physical street address in Australia*’ that ASIC can send official notices and letters to, and which will be visible on ASIC’s companies register. However, it does not need to be actually occupied by a business or the place that it conducts its business.⁵⁶

What does it mean to provide a service in the course of carrying on a business?

See commentary in relation to [Item 1](#).

It is important to be aware that this service will be provided regardless of whether it is provided free of charge or not.

⁵⁵ Explanatory Memorandum, [394]-[398].

⁵⁶ ASIC, Company Addresses (Webpage)

<<https://www.asic.gov.au/for-business-and-companies/companies/company-building-blocks/company-addresses/>>.

Exemptions and exclusions

Overview

There are multiple exemptions and exclusions that limit the scope of application of the Items in Table 6. Some of these derive from the text of the Items themselves and AUSTRAC's interpretation of the same, which have been discussed above.

Other exemptions and exclusions derive from a multitude of places:

- the text of the AML/CTF Act;
- the AML/CTF Rules; and
- AML/CTF Class Exemption Rules.

The key exemptions and exclusions (other than those referred to above) that you need to be aware of relate to:

- Barristers
- Community legal centres
- Court referrals
- Duty lawyer services
- Legal aid commissions

Barristers

Barristers are not covered by the Regime when conducting the following activities:

- **Providing services to clients on the instructions of a solicitor:** services provided by barristers are not a designated service if provided on the instructions of a solicitor, if the instructions are given in connection with the provision of a designated service;⁵⁷
- **Providing services to Australian government bodies:** The AML/CTF Act does not apply to a Table 6 designated service provided by a barrister to an Australian government body (until 31 March 2036);⁵⁸
- **Providing a service to clients on a direct brief, where the instructions are limited to advocacy and advice:** AUSTRAC has confirmed that where a barrister is retained by direct brief and the engagement is confined to advocacy and legal advice (including conferences, settling submissions and pleadings, opinions on rights and liabilities, mediation and appearances), no designated service is provided.

A more detailed discussion of the application of the AML/CTF Act to barristers is located [here](#).

⁵⁷ AML/CTF Act, section 6(6B).

⁵⁸ AML/CTF Class Exemption Rules, Rule 7.1,

Community legal centres, Aboriginal and Torres Strait Islander Legal Services, and Family Violence Prevention and Legal Services

AUSTRAC has confirmed that most of the services provided by community legal centres will not constitute Table 6 designated services.

There is also an explicit exemption in Chapter 9 of the AML/CTF Class Exemption Rules for *'incidental services provided by community legal centre or legal aid'*, which exists to ensure that CLC's can provide services that incidentally involve the provision of a designated service (which can occur, for example, in family law or elder law matters) without triggering AML/CTF obligations.

The exemption provides that the AML/CTF Act does not apply to Items 1, 3, and 4 of Table 6 if the service is incidental to the provision of professional legal services that are not designated services, and the service is:

- provided by a person accredited under the National Accreditation Scheme of Community Legal Centres Australia; or
- provided by an Aboriginal and Torres Strait Islander Legal Service or Family Violence Prevention and Legal Service that receives funding under the National Access to Justice Partnership agreement.

Court referrals

The provision of a Table 6, section 6 service to a client by a legal practitioner because of a referral for legal assistance by a court or tribunal is exempt from the scope of application of the Regime.⁵⁹

Duty lawyer services

The provision of a Table 6, section 6 service to a client by a duty lawyer or advocate at a court or tribunal is exempt from the scope of application of the Regime.⁶⁰

Legal aid commissions

AUSTRAC has confirmed that the services provided by legal practitioners at legal aid commissions, or by private practitioners and firms undertaking work under a grant of legal aid, provide do not constitute designated services under the AML/CTF Act and that they do not trigger AML/CTF obligations.

There is also an explicit exemption in Chapter 9 of AML/CTF Class Exemption Rules for *'incidental services provided by community legal centre or legal aid'* which exists to ensure that legal aid commissions can provide services that may incidentally involve the provision of a designated service (which can occur, for example, in family law or elder law matters) without triggering AML/CTF obligations. The exemption provides that the AML/CTF Act does not apply to Items 1, 3, and 4 of Table 6 if the service is incidental to the provision of professional legal services that are not designated services, and the service is provided by or paid for by a legal aid commission (including funding payment for the service through a grant of legal aid).

⁵⁹ AML/CTF Class Exemption Rules, Rule 9.2.

⁶⁰ AML/CTF Class Exemption Rules, Rule 9.2.

Practice-specific commentary

Overview

This section explains how the Regime applies to the following areas of legal practice:

- Alternative dispute resolution services
- Barristers
- Barristers' clerks
- Criminal law
- Family law
- Litigation
- Notaries
- Personal injury
- Tax advice and planning
- Template legal documents
- Wills and estates

It does not discuss the application of the Regime to practice areas that will definitely include the provision of designated services, including:

- Conveyancing
- Mergers and acquisition work
- Equity and debt financing
- Restructuring companies and legal entities
- Selling shelf companies

Alternative dispute resolution services

AUSTRAC has confirmed that services commonly delivered by negotiators, mediators, and arbitrators, including the provision of services to parties to a dispute to facilitate dialogue with a view to resolving the dispute either by mutual agreement (in the case of negotiation and mediation), or by binding decision (in the case of arbitration), will not be a designated services. This is because such services will rarely, if ever, 'directly advance' the outcome of a designated service.

Barristers

Most legal services provided by barristers will not involve the provision of Table 6 designated services due to the operation of the various exceptions that apply to barristers.

However, barristers may be subject to the Regime where providing direct briefs to clients in certain circumstances.

What exceptions apply to barristers?

Barristers will not provide a designated service in the following circumstances:

- **On instructions:** where the legal service is provided on the instructions of a solicitor;⁶¹
- **Government work:** where the legal service is provided to an Australian government body;⁶²
- **Duty lawyer:** where the legal service is provided in course of practice as a duty lawyer or advocate at a court or tribunal;⁶³
- **Court referrals:** where the legal service is provided to because of a referral for legal assistance by a court or tribunal.⁶⁴

Direct briefs

Barristers that accept direct briefs may be subject to the Regime *unless*:

- the brief does not involve the provision of a designated service; or
- an exemption applies.

What services will not be designated services?

A direct brief will not involve the provision of a designated service if the service provided is not listed in Table 6, or if the service does not fall within the scope of the Table 6 Items due to the application of the ‘who’ and ‘when’ principle.

As such, litigation work will not be regulated, nor will any work provided in relation to a designated service that does not ‘directly advance’ the outcome of a designated service.

What legal services may be designated services?

Barristers providing services pursuant to a direct brief should be aware that the following may constitute designated services:

- **Item 1—Transaction to sell, buy or otherwise transfer real estate:** Drafting, negotiation, and advice work relating to the proposed terms of real estate transactions, including settlement agreements and family law agreements that are not recorded in court orders.
- **Item 2—Transaction to sell, buy or otherwise transfer a body corporate or legal arrangement:** Drafting, negotiation, and advice work relating to the proposed terms or transfers of interests in joint ventures, partnerships, companies and trusts, including settlement agreements and family law agreements not recorded in court orders.
- **Item 4—Transaction for equity or debt financing relating to a body corporate or legal arrangement (including a proposed body corporate or legal arrangement):** Drafting, negotiation, advice, and litigation work in relation to schemes of arrangement, corporate reconstructions and insurance portfolio transfers.
- **Item 6—Creation or restructuring of a body corporate or legal arrangement:** Drafting, negotiation and advice work in relation to the creation of interests in joint

⁶¹ Section 6(6B).

⁶² AML/CTF Class Exemption Rules, Chapter 7.1.

⁶³ AML/CTF Class Exemption Rules, r 9.2.

⁶⁴ *Ibid.*

ventures, partnerships, companies and trusts, and drafting, negotiation, advice work and litigation work in relation to schemes of arrangement, corporate reconstructions and insurance portfolio transfers.

Barristers' clerks

AUSTRAC has confirmed that barristers' clerks will not be providing a designated service in managing trust accounts for barristers.

Criminal law

Most criminal law services will not involve the provision of any Table 6 designated services. However, complexity exists in relation to certain matters and in relation to Item 3, so you should familiarise yourself with the Table 6 designated services to understand if and when they may be relevant to your practice.

Legal services that are unlikely to be designated services

The following legal services are unlikely to constitute designated services:

- **purely advisory work**, because such work is unlikely to directly advance the outcome of a designated service and is likely to involve the determination of legal questions on matters that have already occurred, rather than matters that are in progress or will occur in the future.⁶⁵
- **litigation work**, because such work is unlikely to directly advance the outcome of a designated service, and because the work is likely to involve the determination of legal questions on matters that have already occurred, rather than matters that are in progress or will occur in the future.⁶⁶
- **services provided as a duty lawyer**, because legal services provided in course of practice as a duty lawyer or advocate at a court or tribunal are covered by an exemption;⁶⁷ and
- **services provided pursuant to a court referral**, because legal services provided to a client because of a referral for legal assistance by a court or tribunal are covered by an exemption.⁶⁸

However, there may be complexity in relation to certain matters involving transfers of property. As such, it is important to be familiarise yourself with the designated services in Table 6 and understand if and when they may be relevant to your practice.

Legal services that may be covered

- legal services provided in relation to bail, if such work relates to the sale or transfer of assets (subject to the satisfaction of the 'who' and 'when' principles);
- legal services provided in relation to criminal confiscation and forfeiture proceedings, as such work may involve transfers of property (albeit with approval of the relevant proceeds authority);

⁶⁵ AUSTRAC, Guidance, 'Not pursuant to or resulting from a court or tribunal order (items 1 and 2)

⁶⁶ AUSTRAC, Guidance, 'Not pursuant to or resulting from a court or tribunal order (items 1 and 2)

⁶⁷ AML/CTF Class Exemption Rules, r 9.2.

⁶⁸ AML/CTF Class Exemption Rules, r 9.2.

- representation of litigants in apprehended domestic violence order (**ADVO**) proceedings, if such work involves consideration of property arrangements between the parties and prospective dealings affected by ADVOs.

Item 3

Criminal lawyers also need to consider Item 3 of Table 6, which relates to receiving, holding and controlling a person's money as a part of assisting a person in the planning or execution of a transaction in the course of carrying on business.

Item 3 may be relevant to your practice if you use your trust account to receive and hold client money in circumstances that are not covered by an exclusion in section 6(5C) and 6(5D). These sections provide that Item 3 does not apply to:

- money received and held in your trust account as payment for fees for the provision of professional services;
- money is held for payments incidental to the provision of services which are not designated services and the law firm does not provide any other designated services as a part of its business;
- money is held to be received or payable under an order of a court or tribunal; and
- money is held as a payment to or from a licensed insurer, a government body or a court or tribunal.

The net result of these exemptions is that a practice will not be regulated where:

- it only receives and holds client money (or other property) in circumstances covered by an exclusion to Item 3; and/or
- it does not provide any other designated services.

This means that a practice can use its trust account to receive payments of litigation related disbursements, holding funds on account of fees, to receive or pay settlement monies, or receive court judgement awards, without providing a designated service.

Family law

Most family law work will not involve the provision of a designated service.

However, complexity exists in relation to certain matters, and in relation to Item 3. As such, it is important to be familiarise yourself with the designated services in Table 6 and understand if and when they may be relevant to your practice.

Legal services that are unlikely to be covered

The following services are will not involve the provision of a designated service:

- advice about the transfer of real estate (Item 1 of Table 6) and the transfer of body corporate or legal arrangements such as trusts (Item 2 of Table 6) as part of a property adjustment (such work is not covered until steps are taken to implement a property settlement due to the 'who' and 'when' principles));

- services provided to implement a property adjustment (i.e., where real estate is transferred from one party to another, or where changes are made to structures) where the transfers are made pursuant to or resulting from a Court Order;
- drafting a consent order to settle family law proceedings, including providing for transfer of property;
- drafting and executing a binding financial agreement in relation to transfer of property.

Legal services that may be covered

- services provided to implement a property adjustment (i.e., where real estate is transferred from one party to another, or where changes are made to structures) in the absence of a court or tribunal order.

Court order exemption and BFAs

Practitioners should pay attention to the precise terms of court orders, as it is only transfers that are pursuant to or resulting from the court orders that are exempt.

Practitioners should also be aware that Binding Financial Agreements (**BFA**) are not included within the scope of the court order exemption, so transfers implementing a settlement pursuant to a BFA will be a designated service if they involve the provision of any designated services (for example, Items 1 or 2 of Table 6).

However, services provided in relation to Items 1, 2, 3, 4, and 6 will not be designated circumstances unless the ‘who’ and ‘when’ principles are satisfied. This means that any legal services provided in relation to the preparation and execution of a BFA will only be a designated service if it directly advances the outcome of these designated services, which is unlikely to be case for most advice and representation work.

Item 3

Family law practitioners also need to consider Item 3 of Table 6, which relates to receiving, holding and controlling a person’s money as a part of assisting a person in the planning or execution of a transaction in the course of carrying on business.

Item 3 may be relevant to your practice if you use your trust account to receive and hold client money in circumstances that are not covered by an exclusion in section 6(5C) and 6(5D). These sections provide that Item 3 does not apply to:

- money received and held in your trust account as payment for fees for the provision of professional services;
- money is held for payments incidental to the provision of services which are not designated services and the law firm does not provide any other designated services as a part of its business;
- money is held to be received or payable under an order of a court or tribunal; and
- money is held as a payment to or from a licensed insurer, a government body or a court or tribunal.

The application of this Item to family law practice is complex, as the question of whether you are providing an Item 3 designated service or not may depend on whether you provide any other designated services.

For example, where parties sell assets prior to settlement, it is not uncommon for solicitors for one party to agree to hold sale proceeds in their trust account on behalf of both parties, pending settlement or Court Order. As there is no Court Order yet, the Court Order Exemption does not apply, so Item 3 may be engaged. In these circumstances, the incidental payments exception in section 6(5C) will only be available if the law firm does not offer any other designated services. If the law firm has a property or commercial arm through which it provides designated services, then the exemption for money held for incidental payments exception will not apply.

Another illustrative example involves circumstances where a party agrees to transfer \$10 as consideration for the other party agreeing to release them from maintenance payment liability as part of a BFA. The nominal consideration is paid into the trust account of the solicitor acting for the first party pending settlement of the BFA. In these circumstances, no Item 1, 2, or 4–9 designated services are being provided. Item 3 could be engaged, but as the payment is incidental to the provision of a non-designated service, the law firm will only be providing a designated service if provides designated services to other clients.

Item 6

Family lawyers should also have regard to Item 6 of Table 6, which is assisting a person to plan or execute, or otherwise acting on behalf of a person in, the creation or restructuring of a body corporate or a legal arrangement (which includes an express trust). If work done to implement a property settlement falls within this item, it will be a designated service. The Court Order exemption does not apply to Item 6.

Family lawyers who take the view that they do not and will not provide designated services will need to remain vigilant as to the scope of work they undertake to ensure that they do not begin to provide designated services.

Litigation

AUSTRAC has confirmed that litigation services will not constitute a designated service because they are unlikely to directly advance the outcome of a designated service, and because they are likely to involve the determination of legal questions on matters that have already occurred, rather than matters that are in progress or will occur in the future.⁶⁹

Item 3

While litigation services will not constitute a designated service, it is important to be aware of Item 3, which relates to receiving, holding and controlling a person's money as a part of assisting a person in the planning or execution of a transaction in the course of carrying on business.

Item 3 may be relevant to your practice if you use your trust account to receive and hold client money in circumstances that are not covered by an exclusion in section 6(5C) and 6(5D). These sections provide that Item 3 does not apply to:

- money received and held in your trust account as payment for fees for the provision of professional services;

⁶⁹ AUSTRAC, Guidance, 'Not pursuant to or resulting from a court or tribunal order (items 1 and 2)

- money is held for payments incidental to the provision of services which are not designated services and the law firm does not provide any other designated services as a part of its business;
- money is held to be received or payable under an order of a court or tribunal; and
- money is held as a payment to or from a licensed insurer, a government body or a court or tribunal.

The net result of these exemptions is that a practice will not be regulated where:

- it only receives and holds client money (or other property) in circumstances covered by an exclusion to Item 3; and/or
- it does not provide any other designated services.

This means that a practice can use its trust account to receive payments of litigation related disbursements, holding funds on account of fees, to receive or pay settlement monies, or receive court judgement awards, without providing a designated service.

Notaries

AUSTRAC Guidance is pending on whether services commonly delivered by Australian Notaries Public, including certifying copies of sale of land documents or witnessing a signature on any documents relating to the sale of land including loan and mortgage documents, constitute designated services.

Personal injury

Personal injury advice and litigation services are not designated services in Table 6 of Professional Services in and of themselves. However, practitioners should still consider Item 3 of Table 6.

Item 3

Item 3 may be relevant to your practice if you use your trust account to receive and hold client money in circumstances that are not covered by an exclusion in section 6(5C) and 6(5D). These sections provide that Item 3 does not apply to:

- money received and held in your trust account as payment for fees for the provision of professional services;
- money is held for payments incidental to the provision of services which are not designated services and the law firm does not provide any other designated services as a part of its business;
- money is held to be received or payable under an order of a court or tribunal; and
- money is held as a payment to or from a licensed insurer, a government body or a court or tribunal.

The net result of these exemptions is that a personal injury practice, which does no other designated services, will be outside the Regime even where the practice uses a law firm trust account for the payment of litigation related disbursements, holding funds on account of fees, to receive or pay settlement monies, or receive court judgement awards.

However, personal injury practices should be alive to ensuring they do not unwittingly drift into providing designated services at the conclusion of a personal injury matter and should avoid follow on work such as establishing trusts to hold and manage settlement funds or facilitate conveyancing work to invest settlement funds.

Tax advice and planning

Tax advice and planning services may involve the provision of Table 6 designated services.

Legal services that are unlikely to be designated services

The following services are unlikely to involve the provision of a designated service:

- purely advisory work, for example, on the implications of selling a body corporate;
- litigation work;
- acting for a client in relation to a transaction to sell a body corporate before a buyer has been identified;

Legal services that may be a designated service

The following services may involve the provision of a designated service:

- acting for a client in relation to a transaction to sell real estate or a body corporate, once the 'who' and 'when' principles are satisfied.

Template legal documents

AUSTRAC has confirmed that services involving the provision of template legal documents by a legal services provider to another person (for example, an accountant) on a subscription basis, where the documents (etc) are used by the other party in the course of their own separate business, including by tailoring them with no additional input from the provider, does not constitute a designated service. This is subject to the caveat that documents provided as templates are not tailored to a specific client.

Wills and estates

Estate planning

Whether a solicitor's work in estate planning is a designated service requires consideration of Item 1 (transfers of real estate), Item 2 (transfers of companies and legal arrangements), Item 3 (holding funds in the trust account) and Item 6 (creation and restructuring of companies and legal arrangements).

What is not a designated service

The following are not designated services:

- preparing or drafting a will, even those containing testamentary trusts (as testamentary trusts are excluded from the definition of trusts for the purposes of Table 6);
- providing advice about the benefits of a trust;

- obtaining grants of probate, letters of administration, and ancillary work obtaining them and administering deceased estates (provided that it involves a court order);
- an in specie distribution of real estate made pursuant to a will covered by the court or tribunal order exception;
- transfers by survivorship (which happen by operation of law); and
- holding estate monies in a lawyer's trust account pending distribution to beneficiaries, provided that there is nothing else in the administration of the estate that would constitute a designated service.

What may be a designated service

Practices that engage in wider estate planning that includes the transfer (Item 1), creation or restructuring of trusts (Item 6), including SMSFs, may be providing designated services depending on the 'who' and 'when' principles.

For example, the following are likely to be designated services:

- drafting a trust deed for the creation of the trust;
- drafting a deed amending an established trust;
- drafting a deed or providing services to give effect to a restructure of the legal structure of the trust.

Importantly, these same principles apply to the transfer, creation or restructuring of other entities that clients may use for estate planning purposes, including companies and partnerships.

Estate administration

Whether a solicitor's work in estate administration is a designated service requires consideration of Item 1 (transfers of real estate), Item 2 (transfers of companies and legal arrangements), Item 3 (holding funds in the trust account) and Item 6 (creation and restructuring of companies and legal arrangements).

What is not a designated service

- services provided in relation to a transfer of real estate from a deceased estate following court ordered grant of probate or letters of administration is not a designated service.

What may be a designated service

- legal services provided in relation to a transfer of property from a deceased estate where no grant of probate is obtained (for example in a small estate in a jurisdiction where a grant is not necessary to effect the transfer of real estate);
- creating or restructuring of inter vivos trusts that may follow from the death of a testator.

Item 3

The application of Item 3 to estate administration practice is complex.

Item 3 may be relevant to your practice if you use your trust account to receive and hold client money in circumstances that are not covered by an exclusion in section 6(5C) and 6(5D). These sections provide that Item 3 does not apply to:

- money received and held in your trust account as payment for fees for the provision of professional services;
- money is held for payments incidental to the provision of services which are not designated services and the law firm does not provide any other designated services as a part of its business;
- money is held to be received or payable under an order of a court or tribunal; and
- money is held as a payment to or from a licensed insurer, a government body or a court or tribunal.

In many estate matters solicitors will receive and disburse estate funds from their Trust Account. Provided there is a Grant of Probate or Letters of Administration, then the receiving, holding and disbursing of estate funds from the Trust Account will not be a designated service.

Managing novel and unclear issues: AUSTRAC’s safe harbour approach

After considering the services you provide against the detailed descriptions of the Items in Table 6 above, AUSTRAC’s Guidance, and other AUSTRAC materials (including its Starter Kits and other publications) it should (hopefully) be clear to you whether any of the legal services you provide are, or are not, designated services.

If it remains unclear to you whether the services you provide are, or are not, designated services—for example, because the issue is not addressed in any of the materials—you should follow the approach outlined in AUSTRAC’s regulatory guidance on ‘*Managing issues outside the scope of AUSTRAC materials*’.⁷⁰

This guidance, published on 21 May 2026, defines AUSTRAC’s expectations of entities that may be, or which are, regulated by the AML/CTF Act in relation to the navigation and management of issues that are not addressed in AUSTRAC guidance materials. It outlines an approach that, if used to navigate unclear or novel issues with the AML/CTF Regime, will effectively provide you with ‘safe harbour’ in the event that you inadvertently misinterpret the law.

AUSTRAC’s safe harbour approach

- You must first examine AUSTRAC guidance, program starter kits, and other publications to identify if they address an issue you face (for example, whether a legal service you provide falls within the definition of a specific Item in Table 6).
- If these materials do not address the issue you face, AUSTRAC expects you to develop your own position. To do so, you need to analyse the legislation and apply it to circumstances. You may also wish to seek external advice.
- You then need to document the position you reach about the issue in writing, including an explanation as to why you consider the position you have reached to be reasonable. If you obtained advice that has informed your position, you need to retain records of it.

If you follow this approach, AUSTRAC will not treat an inadvertent misapplication of the law as a sanctionable contravention and it will not, in the first instance, pursue enforcement action. Instead, it will engage with you to understand your position and address any inadvertent non-compliance.

⁷⁰ AUSTRAC, *Update to regulator statement of expectations – May 2026* (Regulatory Guidance, 21 May 2026) <<https://www.austrac.gov.au/update-regulator-statement-expectations-may-2026>>.