

Managing Financial Crime Risk

26th November 2020

About your Presenter



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the
Wolfsberg
Group



Auditing Financial Crime

Auditing financial crime

Internal Audit plays a key part of the three lines of defence model required by APRA and other regulators, including AUSTRAC.

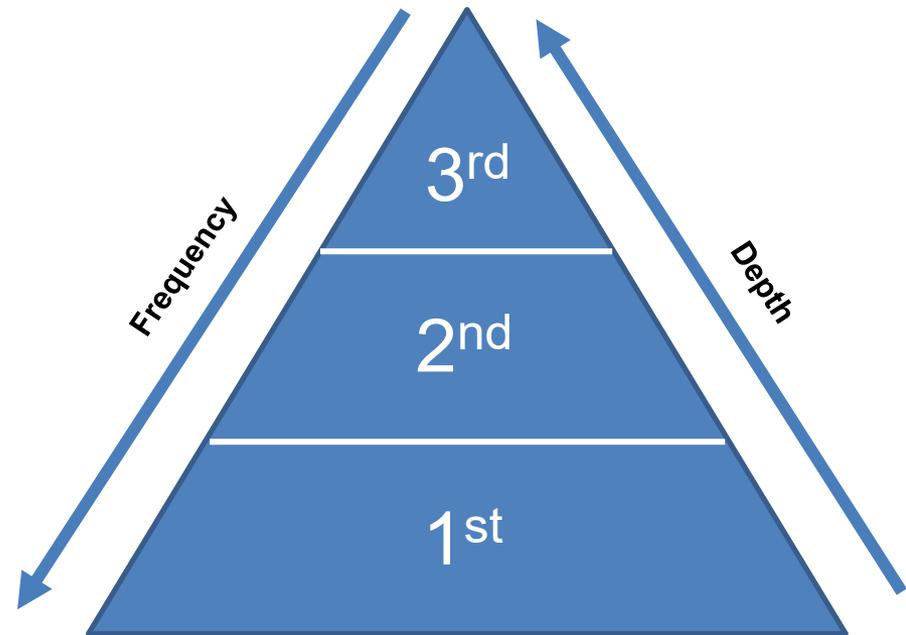


Monitoring and Review – ISO 31000

The **3rd Line** undertakes Assurance which has the greatest depth but the lowest frequency.

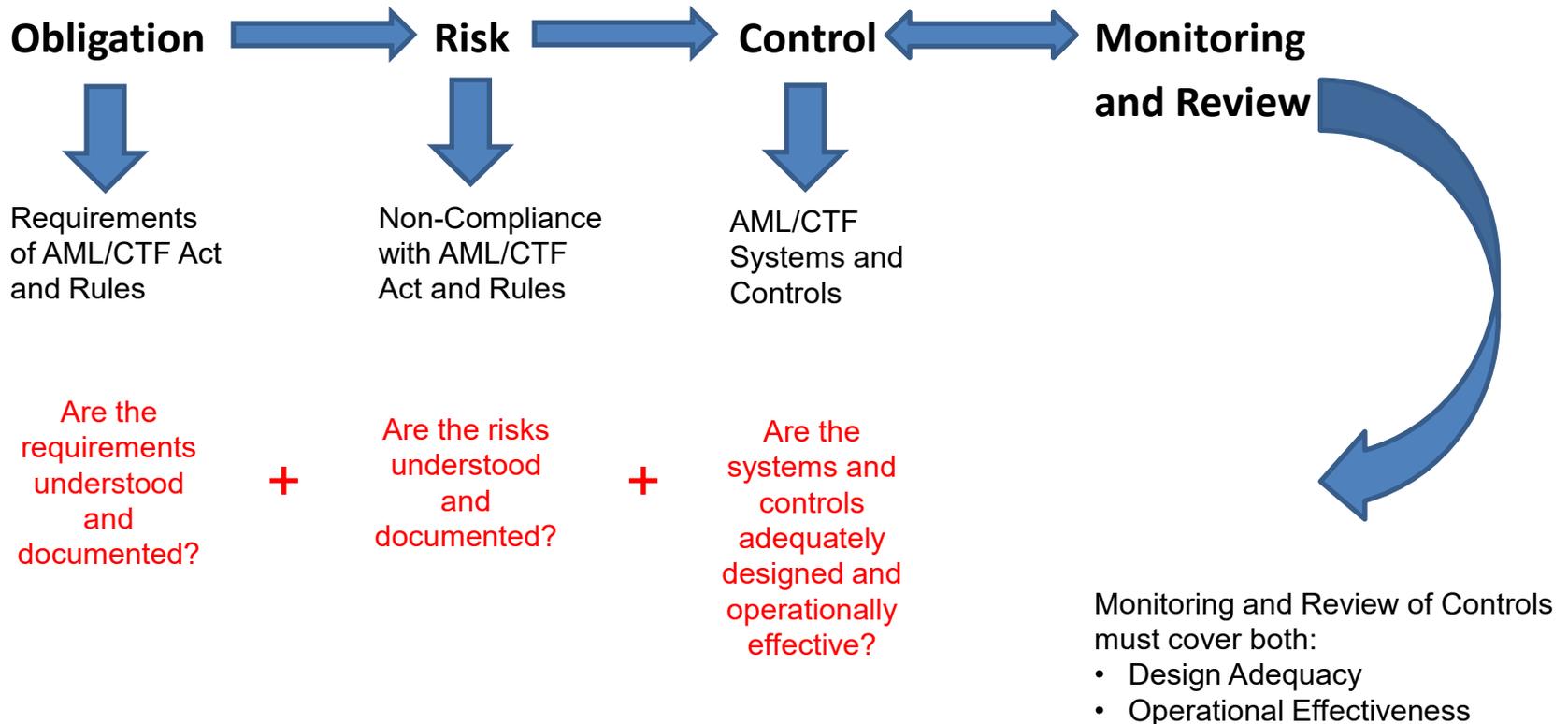
The **2nd Line** undertakes Oversight, which has a degree of depth and frequency.

The **1st Line** undertakes Testing which has the greatest frequency but the lowest depth.



AML/CTF Governance

Monitoring and Review from an AML/CTF perspective.



AML/CTF Governance

Whilst governance is not a specific requirement in the AML/CTF Rules.

AUSTRAC Guidance states:

“You must also report to the board and senior management to make sure the policy, procedures, systems and controls documented in your program are:

- effective
- compliant
- properly implemented
- being followed.”

Governance is being increasingly focused upon....

AML/CTF Governance

The governance needs to be undertaken in a dynamic environment:

- The AML/CTF Act and Rules change
- Regulatory expectations change (expressed through guidance)
- Business activities change
- ML/TF risk profiles change

All of which need to be taken into account to ensure that monitoring and oversight remains appropriate and Board and senior manager assurance is fit for purpose.

Examples of failures later on.....

Independent Reviews

(Part 8.6 and 9.6 of the AML/CTF Rules)

Independent Review

The AML/CTF Rules mandate “regular” Independent review of the AML/CTF Program be undertaken.

The AML/CTF Rules prohibit the review from being undertaken by a part involved in:

- the design, implementation, or maintenance of Part A of the joint AML/CTF program; or
- the development of any of the reporting entities’ risk assessments or related internal controls.

The AML/CTF Rules require that the independence of the reviewer can be demonstrated.

The AML/CTF Rules mandate the review must:

- Assess the effectiveness of the Part A program having regard to the ML/TF risk of each reporting entity in the designated business group;
- Assess whether the Part A program complies with these Rules;
- Assess whether the Part A program has been effectively implemented; and
- Assess whether each reporting entity in the designated business group has complied with its Part A program.

Independent Review

The AML/CTF Rules require that the frequency of the Independent Review should be based upon:

- Nature, size and complexity of the business; and
- The type and level of ML/TF risk it might face.

As a result the requirement to undertake an Independent Review is not risk based, but how frequently you do it is.

In complex organisations the nature, size and complexity and the levels and types of ML/TF risk faced vary.

The design of Independent Review activity cannot be done in isolation.

The Independent Review outcomes must be provided to the Board. This is a fundamental part of the Board discharging their oversight role under Part 8.4 and 9.4 of the AML/CTF Rules.

AUSTRAC External Audits

(Section 162(2) of the AML/CTF Act)

Audit under Section 162(2)

Under section 162(2) of the AML/CTF Act AUSTRAC has the power to require a reporting entity to appoint an External Auditor.

The basis of a 162(2) Audit is that the AUSTRAC believe that a reporting entity has contravened the AML/CTF Act and/or Rules.

These are **not** normal audits because:

- The scope is usually very specific about a particular issue or obligation under the AML/CTF Act or Rules.
- The Audit can be a look back over many year.
- The Auditor is required to reach specific conclusion and make specific types of representation:
 - Any provisions of the AML/CTF Act and/or the AML/CTF Rules which the external auditor concludes have not complied with or is not complying with; and
 - The facts on which the auditor has relied to conclude any provisions have not been or are not being complied with; and
 - Any measures which the external auditor believes should be implemented to ensure that it complies with the AML/CTF Act and the AML/CTF Rules; and
 - The capacity to implement the measures.
- The Audit Report may be used as part of a regulatory action (including Civil Claim) by AUSTRAC and must be drafted to Federal Court standards.

Audit under Section 162(2)

Key Lessons:

- Audit set up is vitally important
 - Understand and document understanding of scope
 - Understand and document expectations from AUSTRAC
 - Understand the obligations and requirements being assessed
 - Understand the business and business process
 - Agree engagement during the Audit
 - Agree key milestones and deliverables
- AEAS are not necessarily appropriate:
 - Tell me
 - Show me
 - Check for myself
 - Reach my own conclusions
- Section 162 Audits are also viewed as a supervision tool by AUSTRAC

A Case Study

Westpac – AUSTRAC Civil Claim

Westpac settles the civil claim by AUSTRAC, paying \$1.3 Billion, with Justice Beach agreeing that:

- The failure of the AML/CTF Program to properly identify, mitigate and manage the ML/TF risks, and that Westpac’s transaction monitoring program failures had ramifications for monitoring international payment flows concerning billions of dollars that had higher money laundering risks including risks associated with child exploitation and tax offences.
- Correspondent Banking failings that exposed the Australian payments system to ML/TF risks. Concluding "contamination from the suspect practices of foreign correspondent banks and their customers must be avoided."

The fine is the largest in Australian corporate history, and the largest non-USA AML/CTF fine globally.

Westpac – AUSTRAC Civil Claim

Justice Beach split the \$1.3 Billion by contravention:

Contravention	Number	Penalty
s 45(2) – late IFTI reports	19,502,841	\$270 million
s 45(2) – IFTI reports without payer name	76,144	\$20 million
s 64(7)(f) and (6) – electronic funds transfer instruction failures	10,540	\$3 million
s 115 – record keeping failures	3,516,238	\$7 million
s 98 – correspondent banking preliminary risk assessment and due diligence assessment failures	96	\$300 million
s 81 – AML/CTF program	Innumerable	\$400 million
s 36 – ongoing customer due diligence	262 customers	\$300 million

Westpac – Settlement

Key messages from AUSTRAC:

“The settlement sends a strong message to industry that AUSTRAC will take action to ensure our financial system remains strong so it cannot be exploited by criminals.”

“Westpac’s failure to implement effective transaction monitoring programs, and its failure to submit IFTI reports to AUSTRAC and apply enhanced customer due diligence in relation to suspicious transactions, meant AUSTRAC and law enforcement were missing critical intelligence to support police investigations.”

“Such a large number of breaches over several years was unacceptable and could have been avoided with **better assurance and oversight processes** to identify ongoing reporting failures.”

Looking Down the Road

- Responses to AML/CTF are maturing.
- We are past the “I’ve got a program” phase.
- Understanding the level of AML/CTF compliance is becoming increasingly important.
- Being able to demonstrate AML/CTF compliance is equally important.
- Boards and senior management are increasingly aware of their exposure.
- Having appropriate skilled and qualified people assessing the level AML/CTF compliance is vital.
- Internal Audit’s role in supporting AML/CTF compliance has never been more understood.
- Internal Audit’s ability to supporting AML/CTF compliance has never been more expected.

Questions?