

Why KYC isn't just about AML/CTF

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KYC (Know Your Client) are standards used to verify customers, their risk and financial profiles to protect against fraud, corruption, money laundering and terrorism financing.

The recent passing of the *Anti-Money Laundering and Counter-Terrorism Financing (AML/CTF) Amendment Bill 2024* extends compliance with the *AML/CTF Act 2006 (Cth) (Act)* to practitioners who provide a designated service. The obligations will broadly commence from 1 July 2026.

The importance of 'knowing your client' requires that you actively verify information about your client, their transactions and objectives, and satisfy yourself that there is no suspicious activity. While the AML/CTF regime imposes new obligations on law practices, the concept and practices associated with knowing your client are not entirely new.

In a recent claim the solicitor was retained by a young couple to act on the purchase of an apartment. The solicitor assumed the clients intended to live in the apartment but did not ask the clients about the motivation behind the purchase. The solicitor received a copy of the by-laws and forwarded them to the client. The solicitor did not provide any advice to the clients about any restrictions on use of the property. After settlement the clients became aware that their intended use of the apartment (to lease it out on short term lettings) was prohibited under the by-laws. The clients sued the solicitor for failing to draw this to their attention.

The foundation for providing advice that is fit for purpose lies in first getting to know your client and asking them 'why' questions regarding their instructions.



As stated by Abadee DCJ in the case of *Kumar v Sydney Western Realty Pty Ltd & Anor (No.2)* [2021] NSWDC 446

“.....when a solicitor is obliged to advise, or assumes a responsibility for advising, a client about a transaction, the content of the requirement for advice is contextual; not to be supplied in a vacuum. Consideration should be given not only to the existence of any written retainer (present in this case), but also the other circumstances in which a client sought legal services from the solicitor, and, very importantly, what the solicitor knows about the client’s circumstances and objectives in entering into a transaction. Within that broad context, however, legal advice is not helpful if it is abstract; and untethered from the client’s need for the services: it should, in other words, be suitable for purpose”. At [174]

In *Kumar*, the client purchased a property which consisted of a dwelling house and granny flat. The conversion of the garage into a granny flat did not have Council approval. Renting out both the primary house and granny flat was important for the client.

Following settlement, Council served a notice on the client requiring the granny flat be reinstated as a garage. The client sued the solicitor for failing to advise that the granny flat did not have Council approval.

The questions solicitors trip up on are often the ones they didn’t ask.