An End to Private Mortgage Investors Appearing on Title

The 2026 AML/CTF Reforms

Matthew Bransgrove, Managing Director, author of the *Essential Guide to Mortgage Law in Australia* — LexisNexis

For as long as there has been private mortgage lending in Australia, there have been private mortgage lenders who have insisted on being registered as mortgagee on title. A retired couple's family trust, a doctor's Pty Ltd, an SMSF trustee — each named as lender in the loan deed and holding its own registered first mortgage, in its own name, over its own security. Direct, transparent, and beloved of investors precisely because there is nothing standing between them and the land.

That era is over. Not because of any change in mortgage law, but because of the anti-money laundering regime that took full effect this year.

The obligation is not new — the scrutiny is

Under the Anti-Money Laundering and Counter-Terrorism Financing Act, making a loan in the course of carrying on a loans business is a designated service, and the person who provides it is a reporting entity. The provider is the person who makes the loan — the entity named as lender under the deed, registered as mortgagee on title, and holding the covenant to repay.

This has been the law since 2006. An investor who participates in private mortgages with repetition, system and profit intent — which describes most participants in any managed lending program, however passive their role feels to them — is carrying on a loans business. Named on title, that investor has been a reporting entity since 2006, no different in the eyes of the Act from a bank. Most have never known it, and for twenty years nothing, including AUSTRAC, forced the issue.

The 2026 “Tranche 2” reforms brought the gatekeeper professions — lawyers, conveyancers, accountants, trust and company service providers — into the regime for the first time. Every professional who touches a private mortgage transaction is now a reporting entity in their own right, running customer due diligence, screening counterparties and lodging suspicious matter reports. Tranche 2 did not create the investor's obligation; it ended the era of it going unnoticed.

The obligations that cannot be outsourced

Customer due diligence — identifying the borrower, screening for sanctions, verifying beneficial owners — is the easy part. It can be, and routinely is, performed and recorded by the lender's solicitors as agent for the lender.

The hard part is everything else. A reporting entity must enrol with AUSTRAC. It must prepare a money laundering and terrorism financing risk assessment. It must adopt an AML/CTF program approved by its governing body. It must appoint a compliance officer at management level. It must conduct due diligence and training on its personnel. It must monitor transactions and maintain the capacity to lodge suspicious matter reports. These obligations cannot be assigned away.

It is not realistic to expect a family trust that participates in two or three loans a year to enrol with AUSTRAC, appoint a compliance officer and maintain a board-approved compliance program. It will not happen — and AUSTRAC's civil penalty regime is not a sensible thing for a private investor to be exposed to by inadvertence.

“But I'm not carrying on a business”

Occasional investors will be tempted by the argument that they are not carrying on a loans business at all, and therefore provide no designated service. For a genuine one-off lender that argument is sound. However, their lawyers and accountants are now on notice, as regulated entities, that repeat lending is providing a designated service. Turning a blind eye to it is not practically possible anymore.

The answer: a bare trustee as lender of record

The solution is to use a bare trustee company as the lender of record. It is named as lender in the loan deed, registered as mortgagee on title — in each case holding on bare trust for the participating investor/s. On that structure the designated service is provided by the trustee. It is the borrower's sole counterparty; and the Act expressly contemplates services provided in the capacity of trustee.

The regulatory outcome is exactly what the Act wants: one enrolled, programmed, examinable reporting entity per loan book, with complete customer due diligence records, instead of the obligation dispersed across dozens of passive investors who have no relationship with the borrower and no practical capacity to comply. The investors sit behind the trustee as beneficiaries — and provide no designated service at all.

What it means for investors

Investors lose nothing of substance. The mortgage is still registered; the security is still real property; the trustee holds it for them absolutely and can be compelled to deal with it at their direction. What they shed is a regulatory status they never wanted and could never realistically have discharged. Indeed the arrangement is better than the old one: enforcement is cleaner (one plaintiff, not a syndicate), and the compliance burden belongs to an entity built to carry it.

What it means for loan managers

Managers who currently place investors directly on title face a choice: route their investors through an established enrolled trustee, or stand up a nominee of their own — enrolled with AUSTRAC, running a compliant program, and taking the benefit of solicitor-performed borrower due diligence on every advance. Done properly, AML/CTF stops being a threat to the model and becomes part of the offer: *lend through us and the compliance burden is ours, not yours*.

The bottom line

The private mortgage market is not closing to private investors. But the door they have previously walked through — their own name on the title — is. From here, private capital reaches registered mortgages through entities that carry the AML/CTF regulatory infrastructure.

Private Mortgage Holdings P/L

Bransgroves Lawyers offers the complimentary use of our bare trustee company, Private Mortgage Holdings P/L, as lender of record to fund managers, syndicates and investors who instruct us to act for them on mortgage advances.
