Thursday, 13 June 2024

The Hon Mark Dreyfus KC MP
Attorney-General
4 National Circuit
BARTON ACT 2600

By email: economiccrime@ag.gov.au

Dear Attorney-General

**Reforming Australia's anti-money laundering and counter-terrorism financing regime**

Chartered Accountants Australia and New Zealand, CPA Australia and the Institute of Public Accountants (we/our) together with their respective affiliate bodies represent over 350,000 professional accountants in Australia, New Zealand and around the world.

With many more of our members in Australia to become reporting entities under the proposed reforms to Australia's anti-money laundering and counter-terrorism financing regime (AML/CTF regime), we reiterate our support for the inclusion of some of the services they provide. However, we do not believe all services within the proposed designated services outlined in Paper 2 should be included and we provide our rationale for this recommendation in our submission.

As detailed in our previous submissions on proposed reforms to the AML/CTF regime, the services that professional accountants provide are already heavily regulated by other government agencies, such as the Tax Practitioners Board (TPB), Australian Taxation Office (ATO) and the Australian Securities and Investments Commission (ASIC).

As there is no definition of an 'accountant' in Australian law to designate the services considered high-risk within the AML/CTF regime we welcome the proposed competitively neutral approach as the designated services can be performed by other providers, not just professional accountants. This approach is important to ensure that the AML/CTF risk associated with these designated services is not displaced to unregulated service providers.

Following are our central recommendations with our detailed feedback to the questions raised in Paper 2 – Further information for professional service providers and Paper 5 – Broader reforms to simplify, clarify and modernise the regime in our appendices.

## Central recommendations

### Acknowledgment of the statutory and professional obligations on our members.

To ensure that tranche-two is implemented in the most effective and efficient way, and creates the least disruption to complying businesses, the AML/CTF regime and its obligations should harness, not duplicate, existing regulatory and professional obligations with which professional accountants must comply.

### Clarify which 'person' is the reporting entity

It is not clear under the AML/CTF Act and the enrolment guidelines who is the reporting entity where an accounting practice operates as a partnership firm with say two Certificate of Public Practice (CPP)/Public Practice Certificate (PPC) holders and a business name. We suggest that the legislation be explicitly structure-agnostic, to enable firms to enrol with AUSTRAC (as firms do with other regulators such as the Tax Practitioners Board).

### Remove 'correspondence' and 'administrative' address from Proposed designated service 8

We do not support including the provision of a 'correspondence' or 'administrative' address as a designated service. For our members, it is common practice for their clients to utilise the member's practice address as a central point for correspondence and administrative notices from government bodies. In this capacity, our members are acting simply as a conduit, to receive and pass on information with no control over how their clients respond to the correspondence or administrative notices.

### Replace the word 'collect' with 'sight and record'

We understand that the intent of the word 'collect' is for reporting entities to record the details required to identify a customer and record the key attributes of the documents and sources relied on to verify a customer's identity. We are greatly concerned that many persons new to the regime will interpret 'to collect' as 'take a copy' of documents and sources, heightening the associated cybersecurity and privacy risks. To avoid this unintended consequence, we seek for the language in the AML/CTF Act, Rules and guidance materials to be consistent and clear that the requirement is to sight and record key attributes of documents and sources used to verify a customer's identity.

**Exclude the services of registered liquidators and registered trustees in bankruptcy**

Paper 2 refers to 'insolvency and business restructuring practitioners' and 'insolvency agreements' in relation to Proposed designated service 3. We are unclear if these broad terms are intended to capture both regulated and unregulated professionals offering insolvency services.

We seek an exclusion of the services which can only be offered by registered liquidators in relation to external administrations in accordance with the *Corporations Act 2001,* and registered trustees in bankruptcy, who manage a bankrupt's estate in accordance with the *Bankruptcy Act 1966*.

**Remove the requirement for an independent review**

Currently, such reviews can be undertaken by anyone and the output, such as a report with findings and recommendations, is only provided to the reporting entity, not AUSTRAC. We cannot see how this Rule constitutes effective regulation and appears to contradict the advice provided by Mr Thomas, of AUSTRAC, during Senate Estimates on 29 May 2024, 'I can say our [AUSTRAC] approach to regulation is regulation for a purpose.'[1]

**Include sharing of enforcement decision in the tipping off offence**

There needs to be information sharing arrangements between AUSTRAC and professional bodies, subject to appropriate qualifications for information sharing which would contravene tipping off provisions.

In consideration of private-to-private information sharing, we also seek for the professional bodies to be able share information about disciplinary actions against reporting entities between ourselves to prevent a person being sanctioned from, say, CA ANZ, then seeking membership of IPA or CPA Australia.

**No risk rating for pre-commencement customers**

We do not support retrospectively risk rating all pre-commencement customers. It will not detect past, nor deter future, criminal activity. The cost to new reporting entities would be disproportionate to any potential beneficial outcome.

We do support the proposal that pre-commencement customers are subject to ongoing due diligence and where a suspicious matter report (SMR) obligation arises or there is a change in their risk profile, the relevant customer due diligence (CDD) procedures are undertaken.

[1] Proof Committee Hansard, Senate, Legal and Constitutional Affairs Legislation Committee, Wednesday, 29 May 2024, Accessed 12 June 2024, https://parlinfo.aph.gov.au/parlInfo/download/committees/estimate/28092/toc_pdf/Legal%20and%20Constitutional%20Affairs%20Legislation%20Committee_2024_05_29.pdf;fileType=application%2Fpdf#search=%22committees/estimate/28092/0000%22

### Implementation timeframe

We recommend a 24-month implementation period. Given the considerable workload that professional accountants already face, we consider this is a reasonable period for them to become familiar with their compliance obligations, develop an AML/CTF program, embed new processes where needed and train staff in both AML/CTF risk awareness and effectively implementing the new processes.

Such a period also gives AUSTRAC time to develop the necessary guidance materials and toolkits for impacted industries, and for other regulators to adjust/reduce their compliance obligations to give professional accountants more time to implement the AML/CTF regime.

### Complementary legislative changes

To make being compliant easy, and therefore effective, complementary legislation and key government services should be prioritised. These include:

- a beneficial ownership register;
- private enterprises linking to the government Digital ID system; and
- uplift of business registers and removal of fees to search ASIC registers.

### Conclusion

We reiterate our support for the implementation of tranche-two, critically, that in capturing professional service providers (PSPs), their existing statutory and professional obligations be acknowledged and, where these obligations meet AML/CTF requirements, not duplicated.

We encourage AUSTRAC and the Attorney General's Department to establish an industry working group to support the design and implementation of the AML/CTF regime for tranche-two entities, which then continues to meet regularly to discuss challenges that arise, and potential solutions, for new reporting entities.

We look forward to continuing our engagement with AUSTRAC and the Attorney-General's Department as consultations on the draft Bill and AML/CTF Rules commence.

Sincerely,

**Simon Grant**
Group Executive, Advocacy and International Development
Chartered Accountants Australia and New Zealand

**Ram Subramanian**
Interim Head of Policy and Advocacy
CPA Australia

**Vicki Stylianou**
Group Executive, Advocacy & Professional Standards
Institute of Public Accountants

# Appendix A

## Consultation Paper 2

### Consultation questions

a. Are there any terms contained in the proposed designated services for PSPs that require a statutory definition to clarify their ordinary meaning?

**Reporting entity**

As raised in our covering letter, the Act will need to define who or what is the reporting entity for each potential legal structure of reporting entities.

As an example, we refer to section 5 (1) of New Zealand's *Anti-Money Laundering and Countering Financing of Terrorism Act 2009* which defines how different structures of designated non-financial business and professions are captured. For accounting practices:

> accounting practice means—
>
> (a) an accountant in public practice on his or her own account in sole practice:
>
> (b) in relation to 2 or more accountants in public practice, and practising in partnership, the partnership:
>
> (c) an incorporated accounting practice.

We suggest that the legislation be explicitly structure-agnostic, to enable firms, including partnerships to enrol with AUSTRAC (as firms do with other regulators such as the Tax Practitioners Board).

**Insolvency; business restructuring practitioners; insolvency agreements**

We are unclear if these terms refer to external administrations under the *Corporations Act 2001* and bankruptcy procedures under the *Bankruptcy Act 1966* (formal insolvencies) or any service offered that seeks to address accumulated past-due debt. We note that formal insolvencies include the small business restructuring process.

As only registered liquidators and registered trustees can provide formal insolvency services, bear personal liability for the actions they undertake with the oversight of creditors as well as the regulator, we recommend these services are excluded from the regime.

We acknowledge other jurisdictions capture insolvency practitioners which reflects their overall insolvency regulatory regime. For example, in the United Kingdom, insolvency practitioners can undertake a pre-pack arrangement where a business or its assets are sold to a purchaser prior to an administrator being appointed to the business. In an Australian context, this is essentially an unregulated insolvency process.

We also raise the opportunity for AUSTRAC to harness the work of regulated insolvency practitioners. A key activity for these professionals is to identify and report any suspected misconduct. In liaison with ASIC, AUSTRAC could consider adding a field to the reports these professionals submit to ASIC which would indicate if they had concerns, where the insolvent person is a reporting entity for AML/CTF, that the business of the insolvent person has been misused for criminal activity.

**Proposed designated service 8: correspondence and administrative address**

Clarification is required if the term 'address' is intended to capture any form of address being the physical, postal or electronic address of a reporting entity.

With the presumption it captures all forms of address, we do not consider it reasonable to capture the service of offering the address of a reporting entity as a 'correspondence address' and/or 'administrative address' only. It is common practice for a person to have notices, defined in other legislation as the address for service, of documents from ASIC and the ATO, sent directly to their accountant.

This is not to obfuscate the location of the person, simply to have a central point for most notices. In this scenario, an accountant acts simply as the conduit, receiving notices and passing them on to their client. To further illustrate this point, as there are certain legal documents that can only be served on the individual, such as Director Penalty Notices, an accountant will also provide the individual's address to the regulators.

Conversely, we consider that offering the address of a reporting entity as a person's registered business address or principal place of business should be a designated activity. Conceivably, this could be used to obscure the real location of a person to hide criminal activity. Consideration may need to be given if exemptions are required where other statutory obligations require such use.

Another notable example is for individuals, who will use a reporting entity's address where their address is suppressed with ASIC or other regulators due to risk of domestic violence and a substitute address is required.

Further consideration should be given to circumstances that do not create a risk of misuse by criminals and are a genuine need to use a reporting entity's address as a registered business address or the principal place of business.

b. Should proposed designated service 3 be confined in a way to exclude services provided by sectors beyond PSPs?

No. To avoid displacement of the AML/CTF risk, all persons providing a designated service to the public should be subject to obligations under the AML/CTF regime. To do otherwise may undermine competitive neutrality.

However, we recognise there may be circumstances where designated service 3 captures services not intended to be captured. To maintain competitive neutrality, any exemptions should only be applied in exceptional circumstances.

c. Is the current list of prescribed disbursements in proposed designated service 3 appropriate?

Yes.

d. Are there any additional payments that should be included in the list of prescribed disbursements under proposed designated service 3 due to proven or demonstrable low risk?

Yes. We seek for payments to creditors under the *Corporations Act 2001* and *Bankruptcy Act 1966* to be included.

Where funds are realised during an external administration or during the management of a bankrupt's estate, the respective legislation dictates how those funds can be distributed. Firstly, creditors must prove their debt then, when all creditors are identified, the respective legislation assigns a priority to different classes of creditors for disbursements. We consider there is a low risk that these payments can be exploited by criminals.

e. With reference to proposed designated service 3, how often do you provide services relating to digital assets, and how does this differ from the services provided by dedicated digital asset service providers?

No comment.

f. What additional information, guidance and materials would you require from AUSTRAC to help you comply with your new AML/CTF obligations?

**Timeline**

We also recommend a phased introduction of reporting entities by industry sector, in line with the resourcing and upskilling of AUSTRAC's officers, provided each sector has 24 months to be compliant. A phased introduction will also provide the time for government to invest in raising community awareness.

As an example, we refer to the recent publicity campaign to remind directors of their obligation to obtain a director ID. Community awareness of their CDD requirements will reduce the time and cost for reporting entities to onboard new clients by reducing the time spent on explaining why particular information is required. Our members in New Zealand find that clients arrive at their practice with acceptable identification documents as there has been a concerted effort by all participants in that AML/CFT regime to raise awareness of how everyone can contribute to the detection and disruption of criminal activity.

### Guidance materials

The cornerstone will be the regulatory impact statement and risk assessment to be undertaken by AUSTRAC for each new profession whose services will be captured in tranche-two. These assessments will inform sector specific guidance. For our members, we seek guidance on undertaking a risk assessment and developing an AML/CTF program which interprets the legislative obligations to the language of accountancy.

We refer to AUSTRAC's Pubs and clubs program guide which in the first step asks a business to consider 'the criminal threat environment and possible vulnerabilities of your business.' While this indicates the 'what', a guide for a new reporting entity must also provide the 'how'. That is, detail the steps that a person could take to understand what a criminal threat environment is to assess the vulnerability of their business. Similarly, that a SMR is required when there 'is reasonable grounds' for forming a suspicion. To clarify 'reasonable,' provide examples of what may constitute reasonable grounds.

For example, our members in public practice commonly refer to their business as their practice, and their customers as clients. For AML/CTF obligations, to complement the 'what', provide examples that reflect real world accountant/client interactions to demonstrate 'how' obligations can be applied.

When designing guidance and materials, we ask AUSTRAC to be conscious that these must be easy for a small practice to understand and apply cost effectively. We refer to the Department of Finance *Guide to improving guidance and policy documents* and draw your attention to two of the good practice suggestions, that:

- Guidance material supports differing approaches depending on the size and complexity of the entity, and the need for exercising judgements based on an assessment of risk for both the entity, and the government as a whole.
- Compliance burden on entities in interpreting mandatory requirements can be reduced by including case studies, worked samples and /or optional, adaptable templates.

### AUSTRAC funding

We reiterate our position that the structure of the current industry levy, which applies to large reporting entities, should not change with the inclusion of tranche-two entities. Exponentially increasing the number of reporting entities will benefit all Australians so it is appropriate that the costs of the supervisor, AUSTRAC, should be primarily funded by all Australians.

We acknowledge that the government has allocated funds in the recent budget to aid the implementation of tranche-two. We refer to advice provided by Mr Thomas in the recent Senate Estimates on how the government's provision of $166 million over the coming two years to prepare for tranche-two implementation will be utilised. Mr Thomas advised that 'Most of that money is coming to AUSTRAC for us to prepare for that implementation, in terms of data systems, the uplifting of staff and the investments that we'll be making in terms of education, training and engagement with industry.'[2] We look for the government to continue to provide the funds sought by AUSTRAC and the Attorney-General's Department over future budgets to enable a smooth transition of the proposed reforms.

g. Do you have feedback on any of the proposals relating to legal professional privilege?

No comment.

h. What timeframe would you require to complete a risk rating for all pre-commencement customers (customers who you are in a business relationship with when the reforms commence)?

We do not support risk rating all, or any, pre-commencement customers. It is unclear how such an activity will deter, detect or disrupt past criminal activity or protect the reporting entity from past exploitation. Further, many pre-commencement customers may not seek a designated service after the reforms commence. The time and cost for a reporting entity to undertake such an activity is disproportionate to any beneficial outcome that could be realised.

It is critical, with the thousands of small and micro businesses that will be brought into the regime by the reforms, that the cost of each and every compliance activity is proportionate to its effectiveness in deterring, detecting and disrupting criminal activity.

[2] [2] Proof Committee Hansard, Senate, Legal and Constitutional Affairs Legislation Committee, Wednesday, 29 May 2024, Accessed 12 June 2024, https://parlinfo.aph.gov.au/parlInfo/download/committees/estimate/28092/toc_pdf/Legal%20and%20Constitutional%20Affairs%20Legislation%20Committee_2024_05_29.pdf;fileType=application%2Fpdf#search=%22committees/estimate/28092/0000%22

# Appendix B

## Consultation Paper 5

### Consultation questions

a. Under the outlined proposal, a business group head would ensure that the AML/CTF program applies to all branches and subsidiaries. Responsibility for some obligations (such as certain CDD requirements) could also be delegated to an entity within the group where appropriate. For example, a franchisor could take responsibility for overseeing the implementation of transaction monitoring in line with a group-wide risk assessment. Would this proposal assist in alleviating some of the initial costs for smaller entities?

We can see the efficiency benefits for business groups and this proposal would be beneficial for some of our practices who operate within such structures.

However, most of our smaller practices do not operate as part of a business group and therefore will bear the full cost of this additional compliance regime.

b. The streamlined AML/CTF program requirement outlined in this paper provides that the board or equivalent senior management of a reporting entity should ensure the entity's AML/CTF program is effectively identifying and mitigating risk. To what extent would this streamlined approach to oversight allow for a more flexible approach to changes in circumstance?

We believe the proposed revised program obligations will allow for a more flexible approach. Combining Part A and Part B will result in significant change, and therefore cost, for existing reporting entities. Careful consideration must be given to the expected increase in the effectiveness of Australia's AML/CTF regime for all reporting entities against the expected cost to change AML/CTF programs for existing reporting entities.

**AML/CTF Program**

We welcome comments from Mr Thomas during the recent Senate Estimates hearing that AUSTRAC will work diligently and closely with industry bodies to make compliance as simple and straightforward as it can be. As stated by FATF, 'The development of the ML/TF risk assessment is a key starting point for the application of the RBA [risk-based approach]. It should be commensurate with the nature, size and complexity of the business.'[3] For our members, they 'should design their policies and procedures so that the level of initial and ongoing client due diligence measures addresses the ML/TF risks they are exposed to'[4]

[3] FATF, Guidance for a Risk-Based Approach for the Accounting Profession, accessed 13 June 2024, https://www.fatf-gafi.org/content/dam/fatf-gafi/guidance/RBA-Accounting-Profession.pdf.coredownload.pdf
[4] ibid

The AML/CTF Rules should recognise that the statutory and professional obligations of our members meet AML/CTF requirements and are therefore a mitigating factor to the risk rating of services offered by professional accountants when developing a program.

Membership of a professional accounting body and holding a CPP/ PPC, should allow a person to reduce the initial risk rating of their practice when commencing their business risk rating.

To hold CPP/ PPC requires additional study and we impose ongoing education requirements and professional and ethical obligations on members providing accounting services to the public. These members are subject to regular practice reviews by their relevant professional body to ensure their quality management and risk management policies and procedures are maintained to a high professional standard. We provided a detailed table of these statutory and professional obligations in our submission to the Round 1 consultation.

**AML/CTF Program approval**

The language used will be critical for new reporting entities to understand their statutory obligations and implement effective AML/CTF programs. Comments, broadening the application of terms in the legislation, and examples in ancillary documentation will not be sufficient.

For example, referring to the 'board or equivalent senior management' to approve an AML/CTF program will not resonate with small and micro businesses, sole traders or partnerships. These structures are the most common structures of the accounting practices that will become reporting entities.

We seek for the language in the Act, Rules and Guidelines to provide clarity for, and be relevant to, all possible reporting entities, especially small businesses. For example, by including 'that where there is no board or senior management, the directors or owners of the business...'

**Compliance officer**

We seek clarification on how our members' current statutory and professional obligations apply when nominating a compliance officer to meet the proposed obligation for 'reporting entities to certify to AUSTRAC that their AML/CTF Compliance Officer is a fit and proper person,'

It is a requirement for our members to be, and remain, a fit and proper person. Where one of our members is nominated as the compliance officer, we seek for the provision of their membership number with the relevant professional body to satisfy this requirement. Similarly, where our members are also a registered tax agent, the TPB requires they satisfy fit and proper person requirements. We seek for the provision that registration with the TPB meets the certification of 'fit and proper' requirement.

### Independent audit

We do not support the proposal to include an independent audit as a category in mandatory internal controls in an AML/CTF program.

Firstly, we reiterate our concerns with the proposed use of the words 'audit' and 'auditor' which have specific meaning in the accountancy profession under the *Corporations Act 2001* and are defined by, and subject to, Australian auditing and assurance standards. It appears this proposal is in reference to the existing requirement for each reporting body to have an independent review of their AML/CTF program at least once every four years and they should continue to be referred to as reviews.

We understand that these independent reviews are intended to meet the Australian supervisor's, AUSTRAC, responsibility to ensure that reporting entities comply with their AML/CTF obligations. We note in the Financial Action Task Force's (FATF) *Guidance on Risk-based Supervision*[5] in 2021, they call on supervisors to focus resources where the risks are the highest. The aim of taking this risk-based approach is to lessen the burden on reporting entities providing lower risk designated services. Key to taking a risk-based approach is for supervisors, such as AUSTRAC in Australia, to work across government and with the private sector to develop an in-depth understanding of the risks that rereporting entities face.

To efficiently allocate resources across government and the private sector, with the inclusion of tens of thousands of businesses into the AML/CTF regime in tranche-two, AUSTRAC should move from rules-based supervision to risk-based supervision.

AUSTRAC should seek information in annual reports that would enable them to identify reporting entities at risk of non-compliance with the regime or at risk of criminal exploitation. AUSTRAC should then direct those reporting entities to undertake an independent review. Importantly, that the reviewer's report and subsequent actions taken by the reporting entity to be lodged with AUSTRAC.

Notably, making a review a mandatory control will create an acute shortage of reviewers, especially those that understand the new reporting entities' business and their ML/TF risks. We are therefore unclear how a review will provide assurance that reporting entities are implementing their AML/CTF program effectively. Particularly as there are no specific qualifications needed by a reviewer and the report they create, with their findings and recommendations, is not lodged with or regulated by AUSTRAC. We consider the cost of these reviews for small reporting entities to be unnecessary and disproportionate to any beneficial outcome or provide a measure of the effectiveness of Australia's AML/CTF regime.

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[5] Financial Action Task Force, Risk-based supervision, accessed on 11 June 2024, https://www.fatf-gafi.org/content/dam/fatf-gafi/guidance/Guidance-Risk-Based-Supervision.pdf.coredownload.inline.pdf

We are concerned an unintended consequence will be the emergence of a cottage industry offering review services. New reporting entities will have no benchmark against which to assess if a review is covering the relevant compliance obligations or if the cost is reasonable. In striving to be compliant, new reporting entities will allocate their scarce resources to an activity that is not monitored or regulated by AUSTRAC.

If the requirement for an independent review is retained, we encourage the government to consider an accreditation scheme for independent reviewers, similar to the current Greenhouse and Energy Auditors register, so that reviews are robust and meet minimum requirements.

c. Many modern business groups use structures that differ from the traditional parent subsidiary company arrangement. What forms and structures of groups should be captured by the group-wide AML/CTF program framework?

When considering how to capture all entities in a group structure, we note the sometimes-complex structures of tranche-two entities, for example, partnerships with associated entities (as defined in section 50AAA of the *Corporations Act 2001 (Cth).* A professional services firm may have a partnership entity and other associated entities including service trusts, and entities that may extend outside Australia.

The group-wide framework should be sufficiently flexible so that designated business groups can adopt appropriate risk structures and controls within the group risk management framework to reflect the nature of services provided by reporting entities. The definition of 'designated business groups' must be suitable and appropriate to tranche-two entities. We would welcome further consultation in relation to designated business groups when related rules are being drafted.

d. To what extent do the proposed core obligations clarify the AML/CTF CDD framework?

While the proposed reforms go some way to clarifying core measures of customer due diligence (CDD), we raise the following concerns.

**Risk rating**

We are concerned the proposed language in this paper implies that, if a reporting entity, then all customers must be risk rated. We seek consistency across any and all documents issued that it is clear that the proposed risk rating requirements apply only to customers seeking designated services.

**Undertaking CDD and record keeping**

In the Act, Rules and Guidelines we seek for each instance of the word 'collect' to be replaced with 'record' or 'sight and record' as relevant. We note the term 'collect' is used throughout CDD obligations as well as the specific section on record keeping.

We are concerned that new reporting entities will interpret ‘collect’ as the need to take and keep a ‘copy’. Where they do not, and an independent review is required, and a reviewer interprets this requirement as keeping a copy, this will create unnecessary friction and additional costs to resolve.

We acknowledge that a reporting entity may choose to take and keep a copy of personal identity documents. It is important to ensure the Act, Rules and Guidelines make the distinction between what must be sighted and recorded to complete CDD and that taking a copy of identity documents is a reporting entities choice, not a requirement. It will also be important to outline that to retain copies of identification documents can only occur where it is not in breach of other legislation and the risks inherent in storing such documents.

**Reasonably satisfied**

We seek further clarity in the AML/CTF Rules on the CDD steps to be taken by a reporting entity that would meet AUSTRAC’s expectation of being ‘reasonably satisfied’.

We would assume, to be ‘reasonably satisfied’ of the ownership and control structure of a corporate customer, reporting entities will need to verify the existence of a corporation, its shareholders and their respective shareholdings. The source of truth for this information is held in the government’s business register and incurs a fee to search for the relevant information.

ASIC Company search

**Information for purchase**

Purchased information is delivered online unless specified. Payment by credit card only.

For more information about ASIC search products, please visit our website.

| Company extract | Price | Select Item |
|---|---|---|
| Current company information | $10.00 | ☐ |
| Current and historical company information | $19.00 | ☐ |

| Satisfied charges | Price | Select Item |
|---|---|---|
| Satisfied charges | $19.00 | ☐ |

| Roles & relationships | Price | Select Item |
|---|---|---|
| Roles and relationship extract | $21.00 | ☐ |

| Certificates | Price | Select Item |
|---|---|---|
| Details of registration of corporations(s) | $21.00 | ☐ |

To minimise the additional compliance costs for a reporting entity, we seek for fees to obtain information through the business register to be at no cost. We refer to other comparable registers in New Zealand, the UK and the US where searching comes at no cost. Where statutory obligations on regulated parties require them to check information held by government, as a principle, there should be no charge to access that information.

Similarly, it is not clear how a reporting entity can be 'reasonably satisfied' of any beneficial owners as there is no public register available for a reporting entity to check, or a government held register to seek confirmation from. The AML/CTF Rules will need to outline how a reporting entity can verify the beneficial owners identified by the customer that will meet AUSTRAC's expectation of being 'reasonably satisfied'.

**Complementary legislation**

In view of the comments above, we flag other proposed laws and legislation that would support the detection of criminal exploitation of Australia's financial system by reporting entities. We urge government to prioritise the following legislative and operational changes:

Beneficial ownership register

- The Government has committed to introducing the register as part of its multi-national tax integrity package and Treasury completed consultation on a proposed register in December 2022.
- The most recent budget allocated $41.7 million over four years from 2024–25 (and $9.6 million per year ongoing) to the Treasury, ASIC and the Attorney-General's Department to regulate and support new beneficial ownership transparency requirements for Australian companies and other entities

Digital ID system

- The *Digital ID Act 2024* and the *Digital ID (Transitional and Consequential Provisions) Bill 2024* will begin by 1 December 2024.
- There will be another, up to, two years before accredited private businesses can apply to join the system, that is, December 2026.
- We urge government to prioritise access for private businesses as soon as possible.

Business registers

- The most recent budget allocated $206.4 million over four years from 2024–25 (and $7.2 million per year ongoing) to improve the data capability and cyber security of the Australian Prudential Regulation Authority (APRA) and the Australian Securities and Investments Commission (ASIC) and to continue the stabilisation of business registers and modernisation of legacy systems.

- As noted in the budget papers, the cost of this measure will be partially met from industry levies on entities regulated by ASIC and APRA whereas, when being implemented by the ATO, all Australians contributed to the cost of development.
- With many reporting entities being the same entities regulated by APRA, and ASIC and will be paying for business registers to be stabilised and modernised, we urge the government to focus more resources on uplifting the business register and connecting the register to the Australian Business Registry Services platform to link director IDs to their relevant companies.
- We iterate our request for fees to search Australia's business registers, which will now result in many of the existing and new reporting entities paying twice to access this information, be removed.

**Initial CDD**

We welcome the recognition of other regulatory obligations and that they can be utilised where they meet the requirements of the AML/CTF regime. We seek clarification on how our members can demonstrate how their current statutory and professional obligations apply to meet these requirements.

On the basis the 'Know your customer' requirements for registered tax agents align with those in the AML/CTF regime, for our members, we seek for recording their registration number issued by the TPB in their CDD policy document as satisfying the requirement 'to demonstrate.'

**Record keeping for CDD**

We reiterate our request for clarity, in all documentation, that 'keep records' refers to a record of the attributes of documents sighted to verify customer identity, not copies of those documents. This is distinct from a reporting entity choosing to retain copies of documents.

As an example, we refer you to the Tax Practitioner Board – Verification process fact sheet. The extract below makes it very clear that there is not a requirement to keep a copy of identification documents and there is a requirement to record key attributes of the identification documents:

> *We do not require you to keep copies or originals of IDs you used to identify a client or their representative. However, you should maintain a record, such as a checklist, with sufficient details as soon as POI checks are undertaken. For example, records should contain date and time when POI checks were done, types of IDs used, how the documents were sighted and who in the practice performed the checks including their position.*

### e. What circumstances should support consideration of simplified due diligence measures?

We are concerned that the proposed streamlining of the application of simplified CDD will in fact increase complexity. The proposal provides less clarity and may mislead new reporting entities to considering all pre-commencement clients, if a retrospective risk assessment is required, as low risk where they have been in a business relationship for many years.

A potential outcome may be that new reporting entities diminish their ongoing monitoring. This also appears contrary to international standards, which do not support other simplification measures such as a business size threshold for becoming a reporting entity.

### f. What guidance should AUSTRAC produce to assist reporting entities to meet the expectations of an outcomes-focused approach to CDD?

Refer to our response in relation to Paper 2, question f.

### g. When do you think should be considered the conclusion of a 'business relationship'?

There is no standard time frame for when a business relationship between an accountant and their client ends. It may be determined in their contract (engagement letter) which may also reflect a continuing business relationship with an annual renewal of the contract.

Therefore, we consider classifying the status of a relationship is a risk to be borne by the reporting entity and how it is determined should be noted as part of the CDD record. The classification could also form part of ongoing due diligence with a change to or from a business relationship or the ending of a relationship, being recorded.

We note, that for our members, we encourage them to provide a disengagement letter when they formally end a relationship with a client.

### h. What timeframe would be suitable for reporting entities to give a risk rating to all pre-commencement customers?

We do not support risk rating pre-commencement customers. Please refer to our comments in relation to Paper 2 question h.

### i. Are there situations where SMR or section 49 related information may need to be disclosed for legitimate purposes but would still be prevented by the proposed framing of the offence?

No comment.

### j. Are there any unintended consequences that could arise due to the proposed changes to the tipping off offence? (Paper 5, page 28)

We support the proposed changes to the tipping off offense. We currently have information-sharing arrangements in place with other regulators such as ASIC and the TPB relating to the professional conduct of accountants and are currently subject to consultation by Treasury.

To support an effective AML/CTF regime, an information-sharing regime is necessary to inform ourselves and AUSTRAC of any misconduct that may fall within the jurisdiction of the regime. To be able to provide such information to AUSTRAC would necessarily involve knowing which of our members is a reporting entity under the AML/CTF regime. We note that the Department of Internal Affairs in New Zealand maintains a public *List of Reporting Entities* and we seek for AUSTRAC to make its register of reporting entities public. Similar public registers in Australia are maintained by regulators such as ASIC and TPB, which facilitate information-sharing arrangements.

We also support the private-to-private sharing proposal. Enabling a professional body to be able to notify another, relevant professional body of professional misconduct facilitates their ability to action professional conduct cases and/or to regulate entry/ongoing membership requirements.

**Penalties**

We acknowledge that AUSTRAC has a suite of enforcement tools ranging from education and enforceable undertakings to litigation and civil penalties. While this range of tools is available, they are not explicit in the AML/CTF Act.

For example, the current penalty for entities providing AML/CTF designated services that have not enrolled with AUSTRAC is $18,500 per day. Whilst this might be appropriate for large financial institutions within tranche-one of the regime, it would not be appropriate for a small PSP reporting entity.

We recommend the penalty regime is reviewed for its appropriateness in relation to tranche-two entities, such as PSPs. For example, when determining a pecuniary penalty, enabling the regulator to be able to take into consideration the ability of a reporting entity to pay the penalty.