

23 May 2024

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Dear Dr Popple

REFORMING AUSTRALIA'S ANTI-MONEY LAUNDERING AND COUNTER-TERRORISM FINANCING REGIME – SECOND PHASE CONSULTATION

I refer to your memo dated 3 May 2024. In that memo you requested responses to the second phase of consultation papers published by the Attorney General.

I also refer to your memo dated 7 May 2024. In that memo you requested feedback on draft guidance notes for the profession.

Second Phase of Consultation Papers

The relevant consultation papers were provided to relevant sub committees of the Law Society for comment and circulated to our members via our Friday Facts publication, as well as considered by Mr Craig Slater, the Society's representative on the LCA's AML/CTF Working Group. The relevant comments were as follows:

1. A general resistance to the extension of the AML-CTF Act to the legal profession for all of the reasons previously identified by the Law Council to the Commonwealth. The main concerns being the cost burden to firms, that burden passed to clients, the profession is already well regulated including in relation to the identification of clients.
2. A specific resistance to the extension to small firms where, in the experience of one participant with a medium sized firm, the annual cost of an external audit was in the order of \$14,000 which was significant and may prohibit participation in transactions by those firms.
3. A suggestion that the AML-CTF Act should permit law firms to rely on identification already verified by third party providers for example Australia Post and identification provided for the purposes of electronic land transfer transactions.
4. A suggestion that firms be relieved from the obligation to retain verification of identity documents as that retention generates a risk with access to the information and for cyber-attacks. Instead, the AML-CTF Act could require a document signed by or for the firm that confirms the identity was verified on a particular date for a particular transaction.

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5. A resistance to the creation of an AML-CTF specific definition for “legal professional privilege” as unwarranted (given the obligation to report suspicious matters by other industries), it is likely to be inconsistent with protocols for other agencies (eg ATO and ASIC) or it would be an unwarranted change to the existing common law.
6. A suggestion that the AML-CTF Act could mirror WA the *Criminal Proceeds of Crime Act 2000* (WA) where, by s139, the WA Act overrides legal professional privilege in circumstances where an order or that Act requires the disclosure of information or a document that contains or is likely to contain information that would apart from this section be subject to legal professional privilege. That information or document is “not inadmissible” only because of such a privilege.

Draft Guidance Notes for the Profession

Generally, convenors did not have time to consider the depth of information provided in the draft guidance notes.

1. During the meeting with convenors there was a discussion about the effect of determining that a client or transaction raised a “*red*” flag given the list of red flags was lengthy. Subsequently the red flag guidance was amended to indicate the flags were a guide and did not require or mandate a suspicion of money laundering or terrorism finance.
2. Another observation was that the length of the list of “*red*” flags was long and for that reason may not successfully induce the reader to consider each item diligently.
3. In relation to the guidance on ceasing or declining to act, it would seem appropriate in the context of the obligation to “*counsel against, and not condone or render any assistance toward, that unlawful purpose*” and to “*counsel and dissuade the client*” to highlight for the profession the obligation not to “*tip off*” a client that a suspicion has been formed that the transaction could breach AML-CTF obligations.
4. Some consideration should be given to whether there is a need to modify retainer agreements to permit a practitioner to cease acting without informing the client of the reason for the termination.

Thank you for the opportunity to provide feedback. If you have any questions in relation to it, please contact Ms Susie Moir, General Manager Advocacy and Professional Development on smoir@lawsocietywa.asn.au or telephone (08) 9324 8646.

Yours sincerely



Paula Wilkinson
President