

7 February 2025

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Dear Dr Popple

## **ANTI-MONEY LAUNDERING AND COUNTER-TERRORISM FINANCING ACT 2006**

I refer to the following Law Council of Australia (LCA) Memorandums:

1. Memorandum dated 17 December 2024 requesting input from practice committees about how members see recent amendment of the *Anti-Money Laundering and Counter-Terrorism Financing Act 2006 (ALM/CTF Act)*, in particular the designated service definitions, applying to their specific area of practice; and
2. Memorandum dated 19 December 2024 requesting input from practice area committees about how members see proposed AML/CTF Rules developed by AUSTRAC relating to customer due diligence obligations applying to their specific area of practice.

Your Memos and attachments were provided to the convenors of relevant sub committees of the Law Society, as well as the members of the Law Society's newly formed AML/CTF Working Group. Unfortunately due to the timing of this consultation, limited feedback was received.

### **Memorandum One – Designated service definitions**

1. Concerns remain in relation to the additional administrative and financial burden of the new AML/CTF regime on small or sole practitioner practices that must comply with the same standards as large, state-based, national and international law firms.
2. The designated service definitions relevant to lawyers are set out in Table 6 Professional services, s6 of the AML/CTF Act 2006 (Cth) as amended. The comments are as follows:
  - Items generally – the service of “assisting a person” and later “assisting” carries a difficulty as it is not always clear that a discussion about a possible future event constitutes assisting. Clarity could be achieved by excluding communications that are not in the context of a business environment or on a generic basis without reference to specific real estate/body corporate or legal arrangement/equity or debt financing. Perhaps, some comfort could be given to professionals in the same way that financial advisers avoid having to meet legislative obligations for financial advice by making reference to the advice being generic and suggesting that more specific advice is required. A general exclusion for generic assistance would assist professionals;

- Item 1, 2 – the exclusion of transactions pursuant to or resulting from does not capture transactions that are prepared in advance of court orders and where it is intended or required that there be court orders to approve the transaction;
- The exclusion for court orders could usefully be added to items 3, 6, 7 and 8.

### **Memorandum Two – AML/CTF Rules and due diligence requirements**

1. Firms dealing with real estate transactions already comply with Landgate / PEXA client identity check requirements. Standard identity checks through Australia Post costs circa \$50, (not including the practitioner's time taking client instructions and completing paperwork). This identity check should constitute or be deemed to meet the collection of the least information in Rule 25 of the Exposure Draft Rules.
2. Rule 25 of the Exposure Draft Rules sets a minimum check for individuals which is clear. In Rule 26 of the Exposure Draft Rules AUSTRAC should publish those unique identification numbers currently issued by government bodies for customers which it will accept meet a minimum identity check that would satisfy the legislation where the risk of money laundering is considered low. That will ensure that the cost being imposed on many small firms is kept to a minimum.
3. Rule 27 of the Exposure Draft Rules sets out additional matters for client identity. One additional matter is information on the ownership, control and management structure of the customer. The Rules should state that information published from a government body or a stock exchange or credit reference body on the customer with that information can be accepted as meeting this requirement.
4. Rule 28 of the Exposure Draft Rules sets out identification of beneficiaries. The Rules should state that information on the beneficiaries in any document establishing the trust or authority of the agent can be accepted as accurate (unless contradicted by the agent or other information).
5. Once an enhanced due diligence is required then AUSTRAC should publish clear further checks and how identity can be satisfactorily resolved by those checks so that small firms know when to stop checking. There should also be a clear statement about the limits of the enhanced checks stating it is common for small business clients to have a number of shareholders each of which operate legitimately for or in a trust (sometimes there are layers of trusts). It may not be possible to ascertain precisely the final beneficial interest by a review of trust structures and, in some circumstances, it should be sufficient to rely on statements provided by a client representative (possibly corroborated by an apparently legitimate third party) as to ultimate beneficial ownership – without requiring fully documented proof to be satisfied as to identity.
6. Where the client is a corporate entity, the lines of enquiry required need to apply at both the board and controlling shareholder levels, which if there are (for example) multiple directors and entities in the structure, with trusts in the mix, adds complexity, cost and delays to the due diligence process. AUSTRAC should set out minimum inquiries that are sufficient in the absence of inconsistent results.
7. Rule 35 of the Exposure Draft Rules requires enhanced due diligence for complex or large transactions or unusual patterns of transactions. AUSTRAC should set out some criteria for those tests. To the extent the tests are relative to the client or client's history some basis for the conclusions should be set out by AUSTRAC.
8. Rule 39 of the Exposure Draft Rules sets out some crimes that may raise questions. AUSTRAC should set out what specific publication or data a firm should monitor to meet this requirement as a minimum.

9. To the extent that AUSTRAC believes risks and suspicions can arise from red flags AUSTRAC should set out clear red flags that suggest an enhanced client due diligence is required. There are several lists of red flags but the core minimum ones should be identified to save the guess work by lawyers not trained to undertake detailed investigations.

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

Yours sincerely

A handwritten signature in black ink, appearing to be 'GM', with a stylized flourish at the end.

Gary Mack  
**President**