

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

PEXA Submission to Senate Legal and Constitutional Affairs Committee, 14 October 2024

The PEXA Group welcomes the opportunity to provide a submission to the Senate Legal and Constitutional Affairs Committee in consideration of the Anti-Money Laundering and Counter-Terrorism Financing Amendment Bill 2024.

PEXA and Australia's world-leading digital property settlements system

PEXA was founded as a public-private partnership between several State Governments and financial institutions out of a 2008 Council of Australian Governments (COAG) initiative to create a national e-conveyancing platform authorised under the Electronic Conveyancing National Law (ECNL) to replace the old manual, paper-based conveyancing and settlement processes.

PEXA's e-conveyancing platform (PEXA Exchange) operates in all Australian States and Territories except the Northern Territory, where we are currently aiming to launch in FY26.

The PEXA Exchange is connected to seven Land Titles Offices (LTO) and five State Revenue Offices (SRO)¹ as well as to more than 10,000 legal and conveyancing firms and around 160 financial institutions.

As a result of this extensive network to efficiently, securely and reliably facilitate property settlements, the PEXA Exchange now processes around 90% of all property transactions across Australia.

The existence of a ubiquitous national platform for property transactions places Australia in a unique position globally.

In the context of the proposed "tranche 2" amendments, this provides Australia with a unique opportunity to mitigate the implementation issues that have occurred overseas when these amendments have been introduced and adopt an approach which provides BOTH:

- reduced compliance burden and cost, particularly on small businesses such as solicitors, conveyancers and real estate agents; AND
- more effective regulatory and law enforcement outcomes.

Indeed the standardisation and consistency of process the PEXA Exchange has created has already eliminated one key aspect of AML/CTF risk that exists in other countries from the 90% of transactions processed through the Exchange – the risk arising from settlement consideration being provided through cash or crypto-currencies which are difficult to trace – as settlement funds on all transactions through the PEXA Exchange must be sent from and received into an Australian bank account.

¹ The connection to the Tasmanian SRO is scheduled to go live early in calendar 2025 as we expand electronic conveyancing coverage in Tasmania following the launch in August 2024.

Anti-Money Laundering and Counter-Terrorism Financing Reform

PEXA provided submissions to the Attorney-General's public consultations in June 2023 and June 2024. At its core, the AML/CTF regime is a partnership between the Australian Government and industry. PEXA acknowledges the important need to strike a balance when introducing new obligations for regulated entities, particularly in relation to small businesses. Small businesses are proportionately more impacted by compliance costs and burdens as they are less able individually to effectively define and implement the risk-based and outcomes-focused approach sought by such reforms.

To that end, through our review of the submissions made to the consultations and engagement with our industry partners, including bodies representing banks, real estate agents, conveyancers and legal practitioners, we have identified the concerns of industry and considered solutions that, if the legislation is to be extended to tranche 2 entities, would produce more effective regulatory and law enforcement outcomes while reducing the burden of the regime on a sector that is predominantly small businesses.

Key points of our submission

- International experience has proven that the extension of AML/CTF legislation to “tranche 2 entities” imposes significant costs and compliance burdens on solicitors, conveyancers and real estate agents which are predominantly small businesses, with consequential impacts for consumers. Minimising those impacts is an important and appropriate focus in the Government's assessment of the proposed amendments.
- Australia's electronic conveyancing regime is unique internationally, with PEXA's electronic conveyancing platform (PEXA Exchange) already processing 90% of all property transactions in Australia and classed as critical infrastructure by the Commonwealth.
- Leveraging the PEXA Exchange, and collaboration between industry and Government provides an opportunity to both:
 - Reduce the compliance burden and cost on small businesses such as on solicitors, conveyancers and real estate agents; and
 - Provide more effective regulatory and law enforcement outcomes.
- We recommend simple legislative amendments to enable reliance between parties to a transaction which is implemented through an independent system, such as the PEXA Exchange, which connects those parties and enable secure information sharing between those parties to enable more effective and efficient assessment of AML/CTF risks.

In this submission, we seek amendments to the legislation providing for reliance and information sharing between regulated entities, particularly where small businesses are involved, in situations in which:

- The nature of the transactions is relatively consistent in terms of AML/CTF risk;
- A risk assessment is undertaken at an industry level in respect of those transactions by a reputable industry body, is generally available, and which individual participants can adopt as a standard in implementing their respective AML/CTF frameworks; and
- There is an independent system (such as the PEXA Exchange) which connects the parties to the transaction:

- providing a standard process that provides confidence to regulators and all transaction participants that defined steps giving effect to the industry-developed risk assessment have been undertaken (even if undertaken by another party to the transaction); and
- securely links information from various participants to the transaction enabling more effective risk assessment, better regulatory reporting and supporting law enforcement investigations.

Benefits

A reliance/information sharing model would enable a more effective implementation of the proposed regulatory obligations, improving the ability to assess risk and understand the transactional context by aggregating information in relation to that transaction from all relevant parties:

- **Reduced cost and compliance burdens on small business** - The Attorney-General's Department Impact Analysis estimates the ongoing annual cost burden to lawyers/conveyancers and real estate agents to comply with the AML/CTF regulations at ~\$1.2b p.a. On the figures in the Impact Analysis, the approach outlined in this submission for the removal of duplication of customer due diligence processes in property transactions alone would save ~\$200m p.a. for those businesses (and therefore ultimately for consumers). Significant further savings would be able to be achieved through scale, automation and a lack of duplicated activity – the quantification of which would be determined through engagement with AUSTRAC and industry bodies – and operational impacts on small businesses reduced by being able to leverage the PEXA Exchange, with which lawyers/conveyancers are already familiar, and training and education supported by industry bodies and PEXA.
- **Reduced inconvenience to the consumer** - in the UK, consumer feedback indicates that customers often feel that checks duplicated across their home selling/buying experience are intrusive, administration-heavy or don't reflect their understanding of the risks they pose.²
- **Improved regulatory reporting and assisting law enforcement investigations** - connecting information through the transaction improves the accuracy of regulatory reporting, particularly Suspicious Matter Reports (SMRs), and should reduce false positives³ and assist related law enforcement investigations.
- **Greater security reduces risk of data breaches and increases compliance with Data Privacy Protection** – PEXA is required to meet strict requirements for cyber security and data protection, and is classified as critical infrastructure under the Security of Critical Infrastructure Act 2018 (SOCi), providing greater security and data protection than other systems available to small businesses in the property sector.
- **Could be designed and built in such a way as to comply with international standards including the Financial Action Task Force (FATF) standards** such as timely access to data, record keeping for data and documents and liability in reliance arrangements. These have been significant challenges in other jurisdictions (including the UK) and significant barriers to uptake of reliance arrangements.⁴
- **Tipping Off concerns could be mitigated** through confidential sharing of information restricted to permitted personnel involved in the transaction who need the information for AML/CTF compliance.

² HM Treasury UK (2024) *Improving the effectiveness of the Money Laundering Regulations – Consultation*, p.15

³ The Financial Action Task Force (2021) *Stocktake on Data Pooling, Collaborative Analytics and Data Protection*, p.7

⁴ HM Treasury UK (2022) *Review of the UK's AML/CFT regulatory and supervisory regime*, p. 38

- **Improved detection of unusual behaviour** is more capable of being achieved through information sharing where separate parties are connected to a shared customer in a common transaction⁵. For example, banks might not hold updated information relating to beneficial ownership under a trust structure which can be acquired by the legal practitioner during the conveyancing process and relayed to the bank for consideration in their respective transaction monitoring program.
- **Improved law enforcement outcomes** through a consistent quality of risk assessment, pooled information and improved data quality from a consistent process design for information collection and transmission by regulated entities and which is supported by workflow and automation within the platform.
- **Efficiency through avoiding duplication** – all parties are not required to undertake identical activities enabling real estate agents and legal practitioners/conveyancers to focus on the elements where their contribution is more valuable and assessments are driven by risk, not prescriptive obligations.

Conclusion

Australia is in a unique position globally which provides it with an opportunity to leverage the existing national platform of the PEXA Exchange in extending the AML/CTF legislation to tranche 2 entities involved in property transactions:

- to mitigate the substantial impacts on small businesses which have had major impacts on the legal and conveyancing professions and real estate agents wherever those changes have been enacted internationally; and
- at the same time make the implementation of those amendments more efficient and effective to produce better regulatory and law enforcement outcomes.

The proposed amendments to the draft legislation to provide the mechanisms to support this innovation are included in Appendix A. The Proposed Reliance and Information Sharing Model is illustrated in Appendix B.

PEXA thanks the Committee for considering its submission and welcomes the opportunity to be involved with any further consultation as part of this ongoing reform process.

Yours faithfully,

Les Vance
Group Chief Executive Officer, PEXA Australia

⁵ The Financial Action Task Force (2022) *Partnering in the Fight Against Financial Crime*, p. 14

APPENDIX A – PEXA Analysis of the Bill and proposed next steps

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| Reporting Group | <p>The “tranche 2” reforms replace the current premise of a "designated business group" by introducing the more flexible concept of a "reporting group". The reporting group definition expands beyond traditional corporate group structures and applies a broader framework to capture related entities, including non-reporting entities that may fulfil AML/CTF obligations on behalf of reporting entities in the reporting group.</p> <ul style="list-style-type: none"> • The reporting group definition contained in the Bill is unlikely to allow reporting entities to meet their CDD obligations through facilitation by PEXA because the reforms as presently drafted would (at s 10A(1)(b)(iii)) restrict participants from being a member of more than one reporting group. • Even if participants could be a member of more than one reporting group, this would still be unlikely to facilitate PEXA participants meeting CDD obligations because a reporting group will require a "lead entity" that will be responsible for fulfilling AML/CTF obligations (such as undertaking ML/TF risk assessments and developing AML/CTF policies) on behalf of the group. • A reporting group could potentially be formed by different industry groups but it would still need a lead entity, and this raises the question of who the lead entity would be. It would be most logical that an industry body would take on this role. However, under the Bill, "reporting entity" obligations will apply to both the individual reporting | <p>PEXA's preferred approach to enabling its proposed transaction model is to amend the "Reporting Group" concept within the AML/CTF Act.</p> <ul style="list-style-type: none"> • It appears that, as currently drafted in the Bill, the intent of the "reporting group" definition is simply to expand the old business group definition to also include non-corporate structures such as franchise arrangements and is not intended to capture arrangements involving a collection of unrelated entities participating in a transaction as contemplated for PEXA. • However, the "reporting group" structure could be amended to allow for more streamlined and cost-effective AML compliance by tranche 2 entities, many of whom may otherwise struggle to properly meet their onerous AML obligations. • Further reform to the new "reporting group" concept could allow for groups to be formed in which industry bodies (such as the relevant law society, REIQ, REIV, REIA, NREA, etc) serve as the "lead entity" for the PEXA participants who have membership within that industry. The group members would not need to be members of the lead entity industry body, as long as they are members of the industry itself. • The lead entity industry body would then have the limited responsibility of developing industry standard risk assessments (in consultation with, and approval by, |

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| | <p>entity and the lead entity. The industry body as lead entity would therefore attract liability that it would not otherwise be subject to, because it does not provide a designated service.</p> <ul style="list-style-type: none"> The EM states (at para 48) that AUSTRAC will be empowered to make Rules for other types of groups to be recognised which will allow reporting entities in any sector, but tranche 2 entities in particular, to share or centralise compliance functions. Consideration would be needed in these Rules on the role of the lead entity and any liability attaching to that entity when it does not otherwise provide designated services. | <p>AUSTRAC as appropriate) to be provided to all members of the industry (and not just members of the industry body) to adopt and implement. This will be particularly beneficial for smaller entities that would alternatively have to acquire low-cost "off the shelf" risk assessments that are not specifically tailored to their business and operations. Though it would of course be beneficial to larger entities as well.</p> <ul style="list-style-type: none"> Risk assessments and standards prepared and updated by an industry body, and endorsed by AUSTRAC, are likely to be more detailed, targeted and nuanced towards the real estate industry than ones prepared elsewhere. Industry bodies could leverage their insight and resources to ensure that the Standards are fit-for-purpose. Industry bodies could therefore provide a better quality and more comprehensive set of Standards than ones which industry members would practically be able to prepare themselves or acquire in the market. A major hurdle for this suggestion is that under the current drafting of the Bill, the "lead entity" will be liable for contraventions by member entities. An industry body would be unlikely to be willing to take on that liability, particularly when the body itself is not a reporting entity and does not have its own independent AML obligations. The preferable way around this hurdle would be to introduce a new concept of an "industry reporting group" into the legislation as a bespoke type of "reporting group" arrangement which is headed by a "lead industry body" that is itself not liable for industry members. |

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| | | <ul style="list-style-type: none"> • If stakeholders are open to further legislative amendment in this way, we suggest that the new concept of an "industry reporting group" operate with reference to 3 criteria specified in the Act as follows: <ul style="list-style-type: none"> • Member entities must be part of an eligible industry (though not necessarily a member of a particular industry body); • Industry member entities must agree to adopt industry standards as defined by the industry lead body; and • All industry member entities must operate on a common platform with a standardised workflow (which adheres to the industry standard), so that all participants can be confident that a consistent process has been followed, reflecting these industry standards. • This will ensure that all platform participants having confidence in the process and obviate the need for their own disparate compliance and reporting programs. • It is important that the "lead entity" of an industry reporting group will have no liability. This should be made clear in the language of the new legislative provision itself. • In practice, the reporting group is transaction-based, and so it will be "fleeting" because the participants come together for the transaction, rely on each other for the transaction's duration, and then once over, they disband. The "industry reporting group" definition and criteria should therefore be drafted in way that accounts for the "fleeting" nature of each group under a transaction. |

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| | | <ul style="list-style-type: none"> • This concept would be a significant departure from the current legislation, and so will of course require consultation from all major stakeholders: legislators, the government and AUSTRAC. • On this basis, it could be submitted that this approach would ease the costs burden for small businesses (and indeed, all sizes of businesses), improve efficiencies, and promote optimised AML/CTF activities for industry members. • It is reiterated that: <ul style="list-style-type: none"> a. there should be no size threshold for membership. Whilst benefit to small business is key driver, it's not a criteria for participation in this proposed arrangement; b. The lead entity industry body should not carry any AML/CTF liability for its member entities; and c. Access to membership in an industry reporting group should not be restricted only to agents and practitioners that are members of Industry body, instead, they should only need to members of the industry itself. |
| Reliance provisions | <p>The Bill in its current form does not propose to make any significant changes to the "reliance provisions", (other than changing the language of "applicable customer identification procedures" to "collection and verification of KYC information") which allow reporting entities to rely on the customer identification procedures previously performed by a reliable third party where certain conditions are met.</p> | <p>PEXA's alternative suggested approach to enabling its proposed transaction model is to amend the reliance provisions so that verification can be shared amongst participants in a transaction, in order for it to be done once at the strongest point in the transaction chain.</p> <ul style="list-style-type: none"> • With some further amendment to the reliance provisions in the AML/CTF Act to properly account for the timing of |

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| | <ul style="list-style-type: none"> The EM to the Bill (para 322) indicates that PEXA participants should be able to turn to the existing CDD reliance framework set out in s 37A to s 39 of the AML/CTF Act. These provisions would allow PEXA participants to rely on the customer identification procedures of a reliable third party where the participant has reasonable grounds to believe that the third party has appropriate AML/CTF systems and controls to meet each of the requirements prescribed under Chapter 7 of the AML/CTF Rules. Ongoing reliance under an agreement or arrangement (s 37A(1)(b) and s 37B(1)) would be impractical for CDD on a transactional basis where the parties do not have an ongoing arrangement to rely on CDD. Therefore, given the nature of PEXA transactions, it is more likely that PEXA participants would rely upon s 38, which covers case-by-case arrangements, instead of s 37A. Under the current Rules made for section 38 case-by-case reliance, timing may be an issue because a reporting entity can only rely on the CDD of another reporting entity if the other reporting entity has obtained all the required KYC information before the first entity commences to provide a designated service to the customer. Further, the first entity relying on the CDD must have "reasonable grounds to believe" that the information will be immediately available to the first entity under an agreement in place for the management of relevant documents and electronic data (it is unclear whether this agreement could be with PEXA) or otherwise made available to the first entity as soon as practical following a written request but within 7 calendar days (there is a | <p>the stages of a typical PEXA transaction, and consideration of the practical roles and limitations of each party in a property transaction, real estate agents could rely on the collection and verification of KYC information performed by a solicitor or conveyancer as part of a PEXA transaction. Under this approach, where different aspects of the KYC and verification process are being performed by different entities within a reporting group, each entity will not be responsible for the activities performed by the other. This would avoid for example, a real estate agent forming the view that if they are responsible for the solicitor's activities, they may as well perform those activities themselves.</p> <ul style="list-style-type: none"> In reality, it is more likely that PEXA participants would use an amended version of the existing s 38 (case-by-case) reliance provision. The current Rules for reliance in Chapter 7 will need to be updated to support the different use-cases and how transactions are typically processed. The reliance provisions under the Rules currently limit reliance of another party's KYC collection and verification to circumstances where those KYC activities have <u>already</u> been performed. Under a typical PEXA transaction, the real estate agent is the first entity that interacts with a buyer and is the first participant in the transaction chain to commence providing a designated service. The solicitor or conveyancer is typically then the second entity to enter the PEXA process to perform their part of the transaction. |

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| | <p>question of whether this timeframe is achievable in practice and how the first entity would form such a belief).</p> <ul style="list-style-type: none"> Under the current reliance regime (which the Bill does not propose to materially amend), only ongoing arrangements are afforded "safe harbour" from liability under s 32 of the AML/CTF Act for isolated breaches of customer identification procedures. These "safe harbour" protections do not extend to entities relying on third party CDD pursuant to s 38 on a case-by-case basis. | <ul style="list-style-type: none"> Though it is currently unclear as to when a real estate "designated service" will be taken to be perfected, it is likely that at least for the designated service of "brokering," the service would be considered as having been performed by the real estate agent by the time the conveyancer or solicitor becomes involved. Pursuant to the proposed Bill, a real estate agent would not be permitted to rely upon the verification of KYC information and related due diligence of performed by the solicitor or conveyancer, because the solicitor or conveyancer's activities would likely be considered as occurring subsequent in time to the real estate agent providing their designated service. PEXA suggests a combined / shared collection and verification of KYC information and risk assessment process to accomplish the design principle of "do it once, wherever possible and do it at the strongest point in the transaction chain." On this philosophy, it would be more efficient and streamlined if the solicitor or conveyancer were able to perform the more complex KYC checks (such as PEP screening, beneficial owner checks including ASIC checks etc) to cover the entire transaction, because: <ul style="list-style-type: none"> A solicitor or conveyancer would often be better equipped, better resourced, and better placed to perform the more complex and onerous types of customer checks; Real estate agents may not have sufficient knowledge and training to properly carry out optimal checks; and |

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| | | <ul style="list-style-type: none"> ○ It would avoid doubling of labour. • In the case of solicitors, this concept would apply equally to solicitors in private firms, (large or small) and to in-house solicitors (for example, those within large developer organisations). • Under this more efficient and optimised approach, it is proposed that real estate agents would still perform simple due diligence activities like identity verification of the 'customer'. Whereas conveyancers / lawyers would perform the more complex DD checks and risk assessments such as identification and verification of the beneficial owner and screening for politically exposed persons etc. • PEXA suggests amendment to the relevant reliance provisions in the AML/CTF Act to create a bespoke reliance regime optimised for the real estate industry. The Bill currently seeks to make minor changes to the reliance provisions by changing the language of "applicable customer identification procedures" to "collection and verification of KYC information". PEXA instead suggests that more significant changes be made to these provisions to accommodate its proposed transaction model. One approach would be to amend s 38 by splitting it into a s 38A and s 38B, with the latter proposed section providing a clear framework for combined / shared collection and verification of KYC information and risk assessments for participants under a real estate transaction. • The amendment should make clear that each participant would still be responsible for the actual activities they undertake. Under this approach, a real estate agent would |

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| | | <p>not be responsible for the activities performed by a solicitor, and vice versa.</p> <ul style="list-style-type: none"> • The Rules should be correspondingly amended to allow the more complex verification activities to be performed by a solicitor or real estate agent "as soon as practicable after the designated service has been provided." This would provide a more cost-effective, streamlined and lower-risk AML outcome. • On this basis, the PEXA platform could be harnessed to enforce further requirements to safeguard this kind of proposed verification and risk assessment process. The reliance agreement could be in-built into the user-agreement. For example, PEXA could, as part of its membership conditions, require that real estate agents designate a lawyer or conveyancer earlier in the transaction timeline. PEXA could also implement automated reminders to participants to inform them they are required to perform their designated verification and risk assessment activities "as soon as reasonably practicable". The PEXA platform could also have in-built prevention measures to stop a transaction from completion if CDD has not yet been performed. PEXA could also as part of onboarding, membership and use of the platform require that participants do training and follow particular rules. • These in-built requirements would also support establishing that the relying parties have reasonable grounds to believe verification will be done. As part of |

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| | | <p>promoting this suggestion, PEXA should also consult with AUSTRAC for its views on other safeguards and rules it could implement to ensure reliance is carried out effectively.</p> <ul style="list-style-type: none"> In the event that this suggestion is not adopted, an alternative approach may be to seek a s 29 exemption from AUSTRAC to permit real estate transaction participants to share verification obligations. However it is unclear if such an exemption as contemplated would be available under the legislation, and it is not certain how the exemption would operate in practice. |
| Information sharing | <ul style="list-style-type: none"> The new tipping off prohibition will only apply where a disclosure would, or could, reasonably be expected to prejudice an investigation by the Commonwealth or a State or Territory, or an investigation pursuant to Proceeds of Crime legislation. However, it is not yet clear how parties would be able to know when disclosure could reasonably be expected to prejudice an investigation by the Commonwealth or a State or Territory, or an investigation pursuant to Proceeds of Crime legislation. The new tipping off regime will contain an exception at s 123(5) which provides that the tipping off offence will not apply to information disclosures made between reporting entities for the purpose of detecting, deterring, or disrupting money laundering, the financing of terrorism, or other serious crimes, provided that the disclosure complies with applicable regulations. Under this exception, it is likely that a PEXA participant would be | <ul style="list-style-type: none"> The proposed s 123(5) exception will be useful in circumstances where a real estate agent identifies suspicious information that it can then freely pass on to the conveyancer or solicitor for that transaction. It is expected that the AML/CTF Rules will be amended to specify conditions in which this exception can be utilised. The amended AML/CTF Rules should specifically accommodate circumstances in which a real estate agent could lawfully disclose information about an unusual transactions and behaviour in good faith to a solicitor or conveyancer as part of the same transaction. |

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| | <p>permitted to privately share information with another participant under a PEXA transaction to the extent necessary to fulfil its AML obligations, in circumstances that would previously have been considered "tipping off" under the original iteration of the AML/CTF Act. However, the exception will not be operational until regulations are made that prescribe conditions and safeguards for such information sharing arrangements.</p> | |
| Record keeping | <ul style="list-style-type: none"> • If PEXA were to keep CDD records, it may not meet record keeping obligations that apply to reporting entities. A new s 236B has been proposed that will enable reporting entities which are part of a "reporting group" to discharge their obligations by relying on another member of the reporting group. This will (as stated in the EM at para 960) enable reporting entities to continue to meet record keeping obligations within a reporting group. However, as PEXA will not be a member of a reporting group, the defence available under s 236B would not apply. • It is possible to outsource AML/CTF obligations but this may not be sufficient, and as noted, there is not a defence available under this approach. So ultimately this is likely to discourage PEXA participants from relying on PEXA to hold CDD records. | <p>PEXA is open to the option that it could act as a recordkeeper of CDD records for real estate transactions that take place using the PEXA system, if the government, legislators and AUSTRAC took this view. However the preferred approach is that the records are maintained by reporting entities themselves (see below).</p> <ul style="list-style-type: none"> • The new s 111 proposed by the Bill would require reporting entities to retain initial and ongoing CDD records for 7 years after either the end of a business relationship or the completion of an occasional transaction. • Chapter 7 of the AML/CTF rules require that an entity relying on another reporting entity for CDD must be able to obtain a record of the CDD, on request. The requirements differ depending on whether the reliance is by agreement or on a case-by-case basis. • It would be impractical and onerous for each participant to hold their own CDD records for this amount of time. Or, in the case of reliance, for the records to be held by the solicitor or conveyancer to be provided to a real estate agent. Further, if each participant held their own CDD records and there was a potential noncompliance issue where AUSTRAC wanted proof of the verification process, |

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| | | <p>it would result in multiple requests going to various participants.</p> <ul style="list-style-type: none"> • Instead, it would be more efficient, streamlined, and optimal for participants and AUSTRAC itself, if PEXA centrally held all CDD records and acted as a sole repository for this information. • Relevantly, AUSTRAC permits reporting entities to have ongoing outsourcing arrangements for their record-keeping obligations. The tranche 2 reforms do not appear to affect the availability of this arrangement. • AUSTRAC recommends that where entities have outsourcing arrangements, there should be an agreement in place that includes a range of options to allow participants to take a proportionate and risk-based response to any breaches. The arrangements should also be reviewed periodically. The AML Program should also document how AML compliance risks posed by the outsourcing arrangement are assessed and how the outsourcing arrangement is reviewed. • PEXA should seek clarification that AUSTRAC's outsourcing arrangement guidance would extend to a situation where PEXA is the sole central holder of all CDD records for participants. If AUSTRAC considers that it would be unsuitable, PEXA should seek to see if there is a way for a workable mechanism to be brought into effect. • AUSTRAC's recommended outsourcing arrangement requirements could be incorporated into PEXA user |

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| | | <p>agreement. To ensure complete recordkeeping and consistency, the user-agreement could require that the PEXA participant outsource their CDD record keeping obligation as part of PEXA's service.</p> <ul style="list-style-type: none"> • Whilst noting that PEXA would also need to put thought into how it would hold CDD records and properly comply with CDD recordkeeping obligations, it remains the most optimal approach to centralise CDD recordkeeping and take the burden off smaller entities who may otherwise experience difficulty in complying with their recordkeeping obligations. • Nevertheless, PEXA would prefer that original documents remain with participants. This is particularly so because solicitors and conveyancers are subject to their own independent record-keeping requirements and are generally best placed to be responsible for originals. |
| Other Matters | <ul style="list-style-type: none"> • Solicitors may need to maintain AML/CTF compliance and reporting programs for designated services which are not conveyancing related. • This should not apply to conveyancers, as their business is conveyancing centric. • There may be some conveyancing transactions, for example: <ul style="list-style-type: none"> ○ those created by an order of a court or tribunal; | <ul style="list-style-type: none"> • For standard conveyancing transactions, AML/CTF compliance and reporting will be via the proposed AML/CTF platform. • For non-conveyancing designated services, solicitors will need to follow separate AML/CTF programs which will not be part of that proposed platform. • If these are excluded from the types of transaction that fall within a designated service for AML/CTF purposes, |

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| | <ul style="list-style-type: none">○ those made through grants of probate or letters of administration; and○ transfers by direction of from insolvency trustees and the like, <p>which may not be a designated service for AML/CTF purposes.</p> | <p>they will not be processed on the proposed platform, but may be processed via PEXA's econveyancing platform.</p> |

APPENDIX B – Proposed Reliance and Information Sharing Model

A reliance model for participants to a property transaction provides the opportunity to reduce duplication and benefit from collaborative assessments. The diagram below shows how the obligations might be shared between the parties to the transaction representing the buyer and seller.

Possible AML/CTF combined risk assessment and CDD process

