13 December 2019

Committee Secretary
Senate Legal and Constitutional Affairs Committee
PO Box 6100
Parliament House
Canberra ACT 2600

By email: legcon.sen@aph.gov.au

Dear Sir/Madam

Anti-Money Laundering and Counter-Terrorism Financing and Other Legislation Amendment Bill 2019

The Australian Financial Markets Association (**AFMA**) represents the interests of over 120 participants in Australia's wholesale banking and financial markets. Our members include Australian and foreign-owned banks, securities companies, treasury corporations, traders across a wide range of markets and industry service providers. A significant proportion of AFMA's members are reporting entities for the purposes of the *Anti-Money Laundering and Counter-Terrorism Financing Act* 2006 (**the AML/CTF Act**).

We are pleased to make a submission to the Committee in relation to the *Anti-Money Laundering and Counter-Terrorism Financing and Other Legislation Amendment Bill* 2019 (**the Bill**). AFMA has undertaken significant consultation with the Department of Home Affairs and AUSTRAC in relation to the Bill and are broadly supportive of the amendments proposed in the Bill that pertain to our members and their affiliates internationally. Our view is that such amendments will enhance the robustness of global programs to frustrate money laundering, terrorism financing and related predicate crimes, while delivering efficiencies through reducing duplication.

The Bill is the culmination of a significant process, commencing with the review of the AML/CTF Act conducted by the Attorney-General's Department in 2014 and 2015 and subsequent consultation with the Department of Home Affairs in 2018 and 2019. This consultation continued up until the commencement of the caretaker period prior to the May 2019 Federal Election, with the caretaker conventions preventing additional consultation with industry on further refinements to the Bill.

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Accordingly, the review of the Bill being undertaken by the Committee represents the only opportunity for AFMA to either obtain clarity or to seek legislative amendment prior to the Bill being enacted. The specific comments below should be read in this light.

Section 32

The Bill proposes new Section 32, which imposes a prohibition against a reporting entity providing a designated service unless, and until, the reporting entity has carried out the applicable customer identification procedure. There is a proposed exception in Subsection 32(2) that specifies that the prohibition does not apply if there are special circumstances that justify carrying out the applicable customer identification procedure after the provision of the designated service, with existing Section 33 providing that the only such special circumstances are those provided by the AML/CTF Rules.

AFMA has been working with AUSTRAC regarding one particular special circumstance, specifically relating to the opening of a bank account, although the draft Rule has yet to be released for consultation. Two issues arise from this particular special circumstance that we believe warrant clarity.

Firstly, given that the proposed Rule will relate to opening an account, we request that the term "opening an account" be specifically defined in the AML/CTF Act to ensure consistency of approach across reporting entities. There is some ambiguity as to when an account is actually opened, such that a designated service is provided.

Secondly, the Explanatory Memorandum should both reflect the existence of Section 33 for completeness, and also provide clarity as to transition/commencement with respect to the amendments to Section 32.

Sections 37A, 37B and 38

Collectively, Sections 37A, 37B and 38, in the words of the Explanatory Memorandum, are aimed at "providing reporting entities with greater flexibility to rely on CDD procedures undertaken by a broader range of Australian and foreign entities." AFMA is supportive of these amendments.

We recommend the following amendments to the Bill/Explanatory Memorandum for the purpose of providing reporting entities with sufficient clarity:

- Proposed Section 37A allows for a reporting entity to enter into a written agreement with "another person" but does not appear to stipulate that this person is either a reporting entity or otherwise subject to appropriate AML/CTF regulation and supervision. This stipulation exists only in the Explanatory Memorandum and we submit should ideally be reflected in the legislation.
- Proposed Section 37A allows for two entities to enter into a CDD Arrangement that allows for a second entity to rely on the customer identification procedure undertaken by the first entity. Proposed Subsection 37A(2)(d) requires that the second entity obtain information from the first entity regarding the identity of the customer but does not impose any requirements or restrictions as to the currency of that information. If the intention is to

impose such a restriction, such as a timeframe for how old that information can be, we submit that this should be reflected in the legislation.

Sections 94 – 96

New proposed Sections 94-96 specify the requirements that a financial institution must comply with in order to initiate and maintain a correspondent banking relationship. Specifically, Section 96 imposes requirements with respect to correspondent banking relationships that involve a vostro account.

To the extent that the proposed requirements enhance the requirements for due diligence upon entry into a correspondent banking relationship, we seek clarity in the legislation as to whether such requirements are to be adhered to for existing correspondent banking relationships, i.e. whether the new entry requirements apply to existing correspondent banking relationships. If so, we recommend that the legislation specify a transition period to ensure all correspondent banking relationships are brought up to the new standard.

In addition, we submit that the timing requirements with respect to both the written records and the approval by the senior officers in respect of correspondent banking relationships with vostro accounts in proposed Subsection 96(3) are both too prescriptive and too short. Our concern is that hard timeframes may result in decisions that are not based on full information and hinder the ability for further enquiries to be undertaken to confirm the appropriateness of the correspondent banking relationship. We note the lack of specific timeframes in proposed Subsection 96(1) and submit that Subsection 96(3) should be drafted similarly.

Section 123

The proposed Section 123 simplifies the tipping off prohibition and facilitates the disruption of money-laundering, terrorism financing and predicate crimes by enhancing the ability of reporting entities to share information about suspicious activities without falling foul of the tipping off prohibition. AFMA is supportive of the proposed changes.

Proposed Subsection 123(7) allows for information to be shared to a body corporate within the same corporate group. Subsection 123(7)(f) requires that the disclosure to the related body corporate is done "for the purpose of informing the related body corporate about the risks involved in dealing with the relevant person." Our view is that there may be other legitimate purposes for the sharing of the information between related bodies corporate, including centralised financial crime teams that perform similar functions across multiple jurisdictions, or potentially holding companies that have board and senior management oversight in relation to the reporting entity. We submit that either such purposes are specifically included in Subsection 123(7)(f) or that the restriction is removed or modified to be sufficiently flexible to allow sharing of information in such circumstances.

We further submit that the tipping off amendments specifically contemplate and allow for the sharing of information between entities that have entered into a CDD arrangement under proposed Section 37A.

Section 123(7)(d) permits disclosure to a related body corporate that is a reporting entity or is regulated in a jurisdiction that gives effect to some or all of the FATF Recommendations. However,

s123(7AA)(a) and (b) refer more narrowly to "reporting entity". We consider that the onward disclosure permitted for corporate groups under s123(7AA) and for designated business groups s123(7AB) should mirror the initial disclosure permitted under s123(7). This could be achieved as follows (and replicated for s123(7AB)):

> *(7AA) A reporting entity or related body corporate that otherwise meets the requirements of s123(7)(d) to whom information has been disclosed under subsection (7) must not disclose the information unless:*
>
> *(a) the disclosure is made to another reporting entity or related body corporate that belongs to the corporate group otherwise meets the requirements of s123(7)(d); and*
>
> *(b) the disclosure is made for the purpose of informing the other reporting entity or related body corporate about the risks involved in dealing with the relevant person.*

Finally, we note that the effect of the proposed amendment to Section 123(5) is that there is an exception from the tipping off prohibition in respect of sharing information with a legal practitioner for the purpose of obtaining legal advice, but only in respect of Suspicious Matter Reports under Section 41(2) of the AML/CTF Act but not in relation to Section 49 notice where the AUSTRAC CEO has requested further information. We submit that the legal practitioner exception to the tipping off provisions be extended to cover Section 49.

Section 104

We note the proposed amendment to Section 104 that removes the seven-year requirement for maintenance of records of applicable customer identification information to requiring records to be retained (both in respect of the customer identification information and also the CDD arrangements) for an unspecified period. To the extent that there is a timeframe for the records to be retained, our view is that this should be specified in the legislation.

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Yours sincerely,

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