



8 November 2024

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

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## Inquiry into Anti-Money Laundering and Counter-Terrorism Financing Amendment Bill 2024 [Provisions]

Dear Committee Secretary,

I am writing on behalf of the Australian Banking Association (**ABA**) and its members in response to the Senate Legal and Constitutional Affairs Committee (the **Committee**) in regard to the two additional questions received on 30 October 2024 on the inquiry into Anti-Money Laundering and Counter-Terrorism Financing Amendment Bill 2024 [Provisions] (the **Inquiry**).

We appreciated the Committee's time and questions during the hearing on 30 October. This response adds to the ABA's submission provided to the Committee on 11 October 2024.

1. *Whether we wanted to provide any comments in response to the supplementary AGD submission, published the evening before the hearings.*

We welcome the Attorney-General's Department's (**AGD**) supplementary submission and recognise the need for further engagement to address some issues in the Bill. While we are still considering their submission, we wish to respond to the AGD's additional comments regarding Customer Due Diligence, the Travel Rule and Tipping Off to ensure the final drafting of these provisions achieves simplification and an outcomes focused approach.

**Customer Due Diligence – use of delayed verification scenarios exemptions.** *Note: this is in response to AGD's 2<sup>nd</sup> submission, page 6.*

We suggest it is more appropriate to reframe the primary obligation in clause 28(1) to avoid the need for this exemption, for the following reasons:

- Given the acknowledgement of the operational challenges associated with the name screening process and potential delays to the provision of services for customers, the prevailing practice amongst reporting entities of undertaking the name screening process as a 'day 2' process. The apparent policy intention is to allow reporting entities to continue to do so in certain circumstances.
- It should also be acknowledged that, not only is there an element of duration to this particular exemption, but there is also a degree of acceptance that it would be necessary for reporting entities to rely on this exemption widely in their ordinary course of business for the operational challenges reasons outlined above.
- Therefore, the creation of an exemption should be the least favoured path as it risks creating an enduring exemption.

If the obligation in clause 28(1) is not reframed and the Bill proceeds on the basis that reporting entities should rely on clause 29 of the Bill to overcome the operational challenges of complying with subclause 28(2)(e); in our view, clause 29 as drafted is too onerous. We recommend, at a minimum, it should be



made clear in subclause 29(1)(b)–(d) that subclause 29(1) may be applied to a customer, or to a particular cohort of customers.

**Travel Rule.** *Note: this is in response to AGD's 2<sup>nd</sup> submission, page 10.*

We welcome AGD's recognition that further consultation with the industry on the AML/CTF Rules and Guidance is required for the travel rule. However, in our view the current, prescriptive and complex nature of the definitions in the proposed Bill will not be 'cured' by further guidance or AML/CTF Rules. We strongly support definitions that are high level principles, adopting the revised definitions in the FATF recommendation 16 proposed draft, rather than introducing the technical hierarchical tests in primary legislation which have not been tested with the industry nor prescribed by FATF.

**Tipping Off.** *Note: this is in response to AGD's 2<sup>nd</sup> submission, page 8.*

We acknowledge and appreciate the AGD's commitment to refining the tipping off offence to strike a better balance between the need to genuinely disclose information to mitigate money laundering and terrorism financing risks without compromising law enforcement investigations. However, we reiterate the need to bring forward the commencement date for tipping off to 28 days after the AML/CTF Amendment Bill receives Royal Assent. The existing tipping off provisions continue to have significant impacts on members and represents an ongoing operational burden. Further, the current regime inhibits private to private information under the AML/CTF and therefore restricts the volume of valuable intelligence, which could be available to reporting entities and law enforcement agencies. Further, we welcome the new exception in clause 123(5) of the Bill relating to information sharing amongst reporting entities and support bringing forward the commencement date to ensure the exception can be appropriately and promptly utilised. This will likely enhance the intelligence value to law enforcement and reporting entities by enabling private to private sharing of information under the AML/CTF Act.

2. *Whether we wanted to provide recommendations on drafting changes to the bill that the Committee could consider including in its final report.*

We reinforce the drafting suggestions in Appendix One: Issues of Concern and Potential Remedies of the ABA's submission provided to the Committee on 11 October 2024 and encourage the Committee to recommend the adoption of the drafting suggestions. We have suggested potential remedies wherever possible and provided relevant commentary on the implications for alignment with FATF obligations. Drafting changes have been provided for the following key areas of concern:

- A) Initial and ongoing customer due diligence
- B) AML/CTF Programs
- C) Keep Open Notices
- D) Tipping Off
- E) Obligations relating to Transfers of Value
- F) Designated services provided in another country

The ABA looks forward to the Committee's Report on 13 November and welcomes further opportunities for engagement on this Inquiry.

Yours sincerely,

Australian Banking Association