



14<sup>th</sup> October 2024

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

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Dear Sir/Madam

**SMSF ASSOCIATION SUBMISSION: ANTI-MONEY LAUNDERING AND COUNTER-TERRORISM FINANCING AMENDMENT BILL 2024 [PROVISIONS]**

The SMSF Association welcomes the opportunity to provide this submission to the Legal and Constitutional Affairs Legislation Committee inquiry into the *Anti-Money Laundering and Counter-Terrorism Financing Amendment Bill 2024 [Provisions]*.

The SMSF Association believes that it is essential that Australia has in place a robust anti-money laundering and counter-terrorism financing (AML/CTF) regime to effectively deter, detect and disrupt money laundering and terrorism financing, and ensure that Australia meets the international standards set by the Financial Action Task Force (FATF). We therefore support the *Anti-Money Laundering and Counter-Terrorism Financing Amendment Bill 2024 [Provisions]*, including its approach to implement the regulation of tranche 2 by designated services, rather than specific professions or sectors. We believe this approach will further support the effectiveness of the regime, ensuring individuals cannot avoid their legislative obligations.

However, the resources required by tranche two entities to build, implement and monitor their AML/CTF programs should not be underestimated, especially for professional service providers (PSPs) who we believe will be predominantly small to medium businesses. Currently many of these PSPs are facing significant challenges in their own businesses, including skills shortages and operating in a challenging economic environment. Further, some sectors are already responding to or implementing other Government reforms, including new compliance programs, further stretching available human and financial resources.

To ensure the effective implementation of tranche 2 and avoid unnecessary regulatory burden and cost on new reporting entities, we recommend a whole-of-Government approach to consider all current and pending regulatory reforms impacting tranche two entities. A plan for implementation for all relevant reforms should then be developed to ensure that small to medium businesses can meet their statutory obligations and, importantly, support the successful implementation of these reforms.

Successful implementation of the reformed AML/CTF regime will also be dependent on AUSTRAC taking a proactive role, including working closely with impacted sectors through their representative



professional associations. To achieve this, we have previously recommended AUSTRAC consider establishing industry specific working groups, noting this would also assist in the early detection of pressure points or challenges being faced by PSPs so they can be quickly and effectively addressed.

We are therefore pleased that AUSTRAC is currently establishing a new Industry Forum to engage with relevant sectors on a regular basis, aimed at ensuring constructive and practical input and ongoing collaboration. We believe a key output of this engagement will be the development of practical guidance and resources, with a focus on supporting small to medium businesses.

The extension of the AML/CTF regime to include tranche 2 entities will also significantly expand the range of regulated designated services. This increases the risk of some services being unintentionally captured. For example, item 9 of table 6 creates a new designated service where a professional service provider provides a 'legal arrangement' with a registered office address where the customer does not have a true office address or a physical presence in Australia.

In Australia, approximately two thirds of self-managed superannuation funds (SMSFs) have a corporate trustee<sup>1</sup>, noting both the SMSF and the corporate trustee (company) will be captured as 'legal arrangements' under the expanded regime. There are many benefits to using a corporate trustee, including the perpetual succession of the SMSF.

It is common for the accountant to be listed as the registered office for the corporate trustee. This practice ensures there is a system for addressing important or time sensitive correspondence and reduces the risk of the address not being updated if the customer moved residences for example.

Importantly, the SMSF and corporate trustee have been established by the customers to save and prepare for their retirement, not to operate a business. Each year the SMSF must be audited and lodge an annual return with the ATO. The funds within the SMSF cannot be accessed until the customer meets a condition of release, such as reaching preservation age or turning 65 years old.

Given these facts and the associated low risk with this activity, we believe acting as a registered office for a customer's corporate trustee of an SMSF should be exempt as a designated service.

Similarly, there are risks that existing exemptions may also be unintentionally impacted, such as the exemption from certain AML/CTF obligations for Australian Financial Services (AFS) licensees and financial advisers who only provide item 54 services. This exemption is in recognition of the fact that the AFS licensee or financial adviser arranges for their client to receive another designated service.

Item 3 of table 6 creates a new designated service which captures, amongst other things, controlling or managing a person's money, accounts, securities or securities accounts, or other property as part of assisting the person in the planning or execution of a transaction, or otherwise acting for or on behalf of a person in a transaction, in the course of carrying on a business. The determining factors for whether an activity is covered by this designated service is whether the PSP is providing the person with services associated with the transaction and if the PSP has an active element, for example controlling the property. An example of an activity that would be captured under this designated service is where the PSP has authority over a customer's bank account and

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<sup>1</sup> [SMSF profile | Australian Taxation Office \(ato.gov.au\)](https://www.ato.gov.au/ato/content/smsf-profile)



makes payments from that account on behalf of a customer, for example, to make loan repayments to a financial institution

However, it is unclear whether it also captures situations where a financial adviser adjusts the overall asset allocation for a client's direct investment via a wrap account (or investment platform) in order to realign the allocation with the client's investment goals. In such circumstances there is no disbursements of funds. In fact, all invested funds remain within the wrap account. It is simply the amounts allocated to the existing investments available within the wrap account may change.

If this activity is captured, financial advisers who provide this service will no longer be exempt under new section 26T and instead would be required to comply with the full range of AML/CTF obligations for those services. Again, given the low risk of this activity, we do not believe it should be captured as a designated service.

We acknowledge when drafting the Bill and Explanatory Memorandum, it would be near impossible to consider and list every activity, such as those mentioned above, that may arise and should possibly be exempt from being a designated service. We therefore support the inclusion of subparagraph 6(6A)(a)(iv) that AML/CTF Rules may be made to apply the exemption to other designated services with multiple customers. This ensures that activities can be excluded from being a designated service where appropriate.

The new Industry Forum being established by AUSTRAC will also be integral in raising activities that need to be clarified if captured, should be exempt or need to be clearly identified as being captured by the extended AML/CTF regime.

Yours sincerely,

Peter Burgess  
Chief Executive Officer

#### **ABOUT THE SMSF ASSOCIATION**

The SMSF Association is the peak body representing the self-managed superannuation fund (SMSF) sector which is comprised of over 1.1 million SMSF members and a diverse range of financial professionals. The SMSF Association continues to build integrity through professional and education standards for practitioners who service the SMSF sector. The SMSF Association consists of professional members, principally accountants, auditors, lawyers, financial advisers, tax professionals and actuaries. Additionally, the SMSF Association represents SMSF trustee members and provides them with access to independent education materials to assist them in the running of their SMSF.