

Victorian Legal Services BOARD + COMMISSIONER

Inquiry into the capability of law enforcement to respond to money laundering and financial crime

Submission to the Parliament of Australia's Joint Committee on Law Enforcement

Introduction

The Victorian Legal Services Board (**the Board**) and the Victorian Legal Services Commissioner (**the Commissioner**) are the independent statutory authorities responsible for the regulation of the legal profession in Victoria under the *Legal Profession Uniform Law (Victoria)* (**the Uniform Law**).¹ The two authorities effectively operate as one body, the Victorian Legal Services Board + Commissioner (VLSB+C).

VLSB+C welcomes the opportunity to respond to this inquiry. We previously commented on **Terms of Reference C**, the proposed 'tranche two' reforms to extend anti-money laundering and counter-terrorism financing legislation to services provided by lawyers, in two submissions to the Commonwealth Attorney-General's Department (AGD) in June 2023 and 2024. We have attached both submissions for your reference at [Attachment A](#) and [Attachment B](#).

Our comments in this submission are directed to the matters raised in **Terms of Reference D, E and G**.

Existing Regulation – Overview

The Uniform Law constitutes a common 'uniform' framework for legal regulation across Victoria, NSW and Western Australia. It forms Schedule 1 to the *Legal Profession Uniform Law Application Act 2014 (Vic)* (**the Application Act**) and is implemented in Victoria through that Act. Although we operate effectively as one body, the Board and Commissioner have separate regulatory functions. The Board is responsible for a broad range of regulatory functions, including most relevantly to this submission:

- issuing, renewing, suspending, cancelling and imposing conditions on practising certificates including making decisions about whether the applicant is a fit and proper person to practice law;
- monitoring, inspecting and conducting investigations of law practices' trust accounts;
- administering a range of external interventions into law practices; and
- prosecuting breaches of the Application Act, including applying for removal of lawyers' names from the Supreme Court roll where necessary.

The Commissioner is responsible for the receipt, management and resolution of complaints about the conduct of lawyers by members of the community or on the Commissioner's own motion, which can extend to a lawyer's conduct outside of legal practice. Any investigation may result in the Commissioner taking a variety of disciplinary actions. Regulatory actions against lawyers are in addition to any other criminal or civil sanctions imposed and both the Commissioner and the Board are obliged to report serious offences to the relevant prosecuting authority.²

Terms of Reference D: Trust accounts, fees paid for professional services, and money laundering

We wish to alert the Committee to an increase in the apparent receipt and warehousing of 'dirty' funds in trust accounts. Our investigators have seen situations where money – sometimes millions of dollars – is paid by clients (both domestic and international) into a lawyer's trust account. The money is later 'refunded' by the practice, either to the same payer, or an apparently unrelated entity. Often there is no apparent link to legal services provided by the law practices – e.g. the money has been claimed to be held for escrow or investment purposes – while in other cases

¹ As set out in Schedule 1 of the *Legal Profession Uniform Law Application Act 2014 (Vic)*.

² See Section 465 of the Uniform Law.

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money has been paid into the trust account for 'professional fees and disbursements', despite the quantum of funds being clearly beyond what the relevant law practice could expect to generate in billings.

While we audit lawyers' trust accounts and investigate discrepancies within those accounts, this only applies to a very small percentage of trust accounts, and we consider the AML/CTF obligations to be imposed on lawyers will make it harder for unscrupulous individuals to use trust accounts to launder money and will help lawyers to be more alert to the risk that their trust accounts or services may be misused.

It may be difficult to identify when 'dirty' money is being used as payment for professional services or otherwise paid into a trust account, and such money could be received unknowingly. Nevertheless, we consider that lawyers should be wary of receiving funds where they are not clearly linked to the provision of legal services, and a prudent practitioner should be making enquiries of the source of funds and client's identity in these circumstances. The Board normally only becomes aware of concerning matters many months or years (if at all) after the relevant transactions have occurred.

We discuss this issue further in our previous submission to the AGD ([Attachment B](#)).

Terms of Reference D: Existing criminal offences

Several offences in the *Financial Transaction Reports Act 1988* (Cth) (**FTR Act**) apply to solicitors as part of their financial reporting obligations under the same Act. These include refusing or failing to report a significant cash transaction,³ knowingly providing false or misleading information,⁴ and conducting transactions to avoid reporting requirements.⁵ We are unaware of any solicitors being prosecuted under this regime; nonetheless, we consider that the available maximum sentences (from two to five years imprisonment) are inadequate given the seriousness of the offending. In our view, the penalties are unlikely to deter this behaviour.

We note the proposed AML/CTF reforms will repeal the FTR Act and result in the relevant offences in the *Anti-Money Laundering and Counter-Terrorism Financing Act 2006* (Cth) (**AML/CTF Act**) applying to the legal profession instead. We support the higher maximum penalties for these offences as a means of deterring money laundering, which we regard as particularly egregious when engaged in by officers of the court who have sworn to uphold the rule of law.

Terms of Reference E: Tipping Off offence and collaboration with authorised deposit-taking institutions

In our previous submissions, we noted that authorised deposit-taking institutions (**ADIs**) are failing to comply with their statutory obligations under section 154 of the Uniform Law to report irregularities in law practice trust accounts to us, as they are concerned that doing so may breach the current tipping off provision in the AML/CTF Act.⁶

We remain concerned that some ADIs continue to doubt their ability to share information with us as required, based on their interpretation of the interplay between the AML/CTF Act and the Uniform Law. It is vital for our consumer protection regime that we receive early information about potential trust account irregularities.

The AGD has flagged potential changes to the tipping off offence in their second stage of consultation on the 'tranche two' reforms. Given that reporting entities appear anxious about breaching this provision, any revisions to the offence should include a clear statement to the effect that nothing in the offence affects an ADI's obligation to provide any information required by regulators.

Our previous submissions in [Attachment A](#) and [Attachment B](#) provide further comment on this issue.

³ Financial Transaction Reports Act 1988 (Cth) section 28(3)-(4).

⁴ Financial Transaction Reports Act 1988 (Cth) section 29(2A), (5).

⁵ Financial Transaction Reports Act 1988 (Cth) section 31(1), (3).

⁶ *Anti-Money Laundering and Counter-Terrorism Financing Act 2006* (Cth) section 123(9).

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Terms of Reference E and G: Information sharing with law enforcement agencies in confiscation initiatives

Solicitors often play important roles in transactions that aid in money laundering, such as the initial purchase of property or luxury items. These impugned items may ultimately be the subject of asset confiscation efforts by law enforcement agencies such as the Criminal Assets Confiscation Taskforce (**Taskforce**).

We are seeking clear, codified arrangements for proactive information exchange with the Taskforce and other law enforcement agencies. Section 266A of the *Proceeds of Crime Act 2002* (Cth) allows for the sharing of information with professional disciplinary bodies. Alerting us to a lawyer's involvement in suspicious transactions helps us focus our trust account and law practice audits on relevant firms that may have become involved in money laundering (whether inadvertently or not), ensuring that solicitors involved in money laundering transactions are more likely to be detected and investigated.

We welcome the opportunity to discuss practical arrangements to facilitate an effective partnership with the Taskforce and other interested law enforcement agencies.

Conclusion

We thank the Committee for the opportunity to provide a submission and hope our comments will be taken into consideration.

Yours faithfully

Matthew Anstee
Acting Commissioner

Attachments

Attachment A: VLSBC Submission - 2023-06-16 - Submission to AGD proposals on modernising Australia's AML-CTF regime

Attachment B: VLSBC Submission - 2024-06-14 - Submission to AGD second stage consultation on AML-CTF reforms