6 November 2024

Attention: Senator Nita Green
Chair, Senate Legal and Constitutional Affairs Committee
Senate Legal and Constitutional Affairs Committee

By Email: ***legcon.sen@aph.gov.au***

Dear Chair

RE: Anti-Money Laundering and Counter-Terrorism Financing Amendment Bill 2024 ("the Bill")

The Real Estate Institute of Queensland ("**REIQ"**) appreciates the opportunity to provide further information to the Senate Legal and Constitutional Affairs Committee following the Senate Hearing on 30 October 2024 ("**Hearing**") relating to the Bill.

Firstly, we wish to reaffirm our support to expand the AML/CTF regime to property transactions.

As outlined at the hearing, the REIQ is advocating for a legislative framework that is more practical and flexible. In our view, the Bill should enable a model that allows for sharing and reliance between the multiple practitioners involved in a property transaction. This is critical to avoid unnecessarily onerous administration and excessive cost to both small business and consumers.

The success of this expansion should be guided by experiences learned from our international counterparts namely, New Zealand and the UK.

New Zealand has experienced significant resistance from real estate businesses in response to the AML laws. In particular, in relation to the assessment of complex company and trusts structures that necessitate Enhanced Customer Due Diligence (EDD) to verify the source of funds and wealth. It is evident that agents lacked the training and resources to fulfill this requirement effectively. Based on our investigations, the New Zealand regime has created significant additional costs and responsibilities for real estate agencies. Many agencies have reported being forced to hire or designate an AML Compliance Officer with the requisite expertise, to implement AML systems and processes. Further costs have been incurred to train staff and develop resources and systems to comply with AML/CFT regulations and to engage third party suppliers to assist with compliance.

New Zealand agencies have also reported clients are either unwilling or unable to provide the necessary information, a challenge compounded by the inconsistent understanding of the regime among various agencies. Smaller agencies, in particular, have reportedly struggled to adopt available AML solutions, often resorting to manual verification of identity, stored through emails and unsecured drives. This poses serious cyber breach and privacy risks.

It is evident that AML/CTF obligations internationally impose significant costs and administrative burdens on small business. We believe there are valuable lessons to be learned from other countries that could assist Australia to implement the regime more effectively and efficiently.

Our research into the implementation of the AML/CTF regime to Tranche 2 entities in the UK and New Zealand supports our recommendation to amend the legislation to allow for information sharing and reliance between parties to a property transaction as a mechanism to significantly reduce the cost and regulatory burden of this reform on the property sector.

A New Zealand 2022 report noted that:[1]

- the biggest area of concern raised is the cost of complying with the regime, with some considering that the cost-benefit ratio is out of proportion for many businesses and more significant for small businesses than originally assumed; and
- a common frustration raised relates to the amount of duplication that can occur, with some suggesting that centralising AML/CFT functions such as ID verification could address this issue and provide greater privacy protections with others considering that free access to government databases would achieve this outcome.

A 2021 Report in the UK showed similar experiences among small businesses in the property sector noting that:

- there are practical obstacles to effective compliance with AML regulations including conducting CDD checks with limited face-to-face contact, subjective risk assessments for verifying the source of funds, difficulties in identifying politically exposed persons (PEPs), the "suspicion" requirement in AML regulations and ambiguity within the rules themselves.[2]
- buyers and sellers are confused by the duplicated checks required from them as parties to the property transaction.[3]

As Senator Scarr rightly pointed out during the Hearing, when the AML/CTF regulations are applied to property transactions, it potentially results in the same buyer and seller for the same transaction being screened multiple times for no additional benefit. This duplication results in lost time and money for the consumer and the practitioner conducting the required task. We believe that reducing this duplication through an information sharing/reliance model offers the best opportunity for cost efficient and effective rollout of these reforms.

In the UK a 2022 HMRC report identified "reliance" between parties in a transaction chain as a sensible mechanism to reduce the burden and streamline the process.[4] Additionally, the UK Government published guidance this month on new legislation to strongly encourage information-sharing among AML/CTF regulated entities including Real Estate Agents, Lawyers and Banks:[5]

> *If a wide range of firms across sectors utilise these measures, regulated firms will have richer information sources when undertaking their reporting obligations. This will increase the accuracy of suspicious activity and fraud reporting. In practical terms, the direct sharing provisions enable regulated firms to share customer information with each other with civil liability disapplied on a peer-to-peer basis. Regulated firms may choose to undertake this through direct communication methods, or through a technological platform or mechanism designed by a third party.*

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[1] Ministry of Justice – New Zealand Government, (2022). *Review of the AML/CFT Act* p3. available at AMLCFT-Statutory-Review-Summary-of-Submissions-final.pdf.

[2] *Zavoli, I., & King, C. (2021) The Challenges of Implementing Anti-Money Laundering Regulation: An Empirical Analysis. The Modern Law Review, p 20-22,* available at https://doi.org/10.1111/1468-2230.12628.

[3] *HM Treasury UK (2024) Improving the effectiveness of the Money Laundering Regulations – Consultation), p.15 https://assets.publishing.service.gov.uk/media/65e9e1813649a2001aed6492/HM_Treasury_Consultation_on_Improving_the_Effectivenes s_of_the_Money_Laundering_Regulations.pdf*

[4] HM Treasury (2022) *Review of the UK's Review of the UK's AML/CFT regulatory and supervisory regime* https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/1085407/MLRs_Review_Report_-_2.5_for_publication.pdf P.32

[5] HM Treasury UK (2024) *Guidance on the information sharing measures in the Economic Crime and Corporate Transparency Act 2023*, paragraph 9, https://www.gov.uk/government/publications/information-sharing-measures-in-the-economic-crime-and-corporate-transparency-act/guidance-on-the-information-sharing-measures-in-the-economic-crime-and-corporate-transparency-act-2023.

REIQ
A REAL STEP AHEAD

Technological Solutions

The REIQ recommends that the Bill is drafted with sufficient flexibility to enable leveraging existing and emerging technology within property ecosystems which are already supported by the Law Council, the Australian Banking Association, the Property Council, the Australian Institute of Conveyancers (AIC) National and the AICNSW and AICSA.

These associations understand the value in leveraging legal, regulatory and technical infrastructure that allow all the diverse parties to a property transaction (large banks, small conveyancers, big property developers and law firms, land title office, regulators, government departments) to come together to facilitate the sale/purchase of real estate in a standard manner. We submit that real estate agents should be included (albeit partially) in those same ecosystems to allow for a standard, regulated screening of the money laundering risk.

The Financial Action Task Force (FATF) noted that:

> *The use of new or innovative technological tools to facilitate AML/CFT implementation should be encouraged as part of a proactive posture with regards to identifying and mitigating ML/TF risk. The implementation of the risk-based approach does not need to imply additional effort or burden, rather it should be a reflection of the identified and assessed ML/TF risks and the adequate deployment of mitigation resources*.[6]

This view is supported by the experience overseas where the FATF commended Belgium and Slovakia for implementing similar models in their real estate sector.

Managing and mitigating risks with AML/CFT electronic tools in the EU **Case studies from Slovakia and Belgium**
BELGIUM In 2017, Belgium introduced the so-called "AML tool", the result of a private-public collaboration between a private Belgian tech developer, the Belgian Professional Institute for Real Estate Agents, the Financial Intelligence Processing Unit and the Federal Public Service Economy. The tool guides and advises real estate agents and other parties involved in the process in fulfilling their AML/CFT obligations by offering the following key digital features: • Digital screening of clients / contract parties with a clear acceptance policy • Automatic assessment of the alertness level and risk profile • Different transaction levels • Escalation procedures to the Property Services Regulatory Authority • Possibility for automated annual reports • Digital archive • Support and recognition by the Belgian regulator • Support of different professions including regular staff and AML officers. This tool has proven to be an efficient tool to assess and mitigate ML/TF risks linked to potential transactions, allowing agents to decide whether to accept or refuse a contract based on calculated advice regarding customer acceptance provided by the tool. When a contract is accepted, a risk profile is also calculated and the office employee can decide if

[6] FATF (2022) *Guidance for a Risk-Based Approach to the Real Estate Sector*, FATF, Paris, www.fatf-gafi.org/publications/documents/Guidance-RBA-Real-Estate-Sector.html.

they want to accept the risk profile calculated by the tool based on level of vigilance or to report it to the AML officer, who will then be able to decide whether it is appropriate to accept the contract or to report it to the local authorities for assessment.

Transactions follow a very similar approach. When profiles for both the buyer and the seller parties are inserted in the tool system, a series of questions must be answered to allow the tool to calculate again a risk profile.

In addition, annual reports are pre-filled automatically and can also be submitted via the tool, which also maintains a digital archive.

In May 2017, FPS Economy officially recognised the AML tool for the Belgian market. This means that if the tool is used as designed, the user is deemed to be AML/CFT compliant.

SLOVAKIA

In 2020, an AML "workflow" tool for real estate agents was introduced in Slovakia to simplify and digitalise the work stream of agents. The tool allows different electronic features such as:

- the electronic identification of the client (e-ID);
- the risk assessment and basic screening and automatic identification of the level of risk. This first basic screening indicates in an automated way if the client or BO of the client is a PEP or person of the sanction lists;
- automated indication of next steps, e.g. if a declaration of financial sources or any other additional steps and controls are required, always providing an indication of the level of risk;
- an archive feature for past transactions that includes an indication of the type of case, risk level and date of completion;
- the access to API modules for larger companies.

The tool is highly appreciated in Slovakia as it improves efficiency, ensures agents have a better understating of the due diligence process and ensures high compliance scores. Through its use, real estate agents can much better assess transactions and hence, manage and mitigate ML related risks. To date, however, the tool remains quite expensive for a large segment of the industry, in particular for smaller businesses.

To encourage wider use of this and similar tools, the National Association of Real Estate Offices of Slovakia, expressed the desire for such a tool to be financially supported by the public sector nationally or at a supra-national level, so as to improve the financial accessibility of such tools and enable more real estate agents to use them. The Association considers this would increase compliance with AML rules.

Source: European Association of Real Estate Profession (CIB Vlaanderen and NARKS, the National Association of Real Estate Offices in Slovakia)

Extracted from FATF Guidance for a risk-based approach – Real Estate Sector[7]

[7] FATF (2022) *Guidance for a Risk-Based Approach to the Real Estate Sector*, FATF, Paris, www.fatf-gafi.org/publications/documents/Guidance-RBA-Real-Estate-Sector.html. P22-23

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Costs to the Property Industry

We have been asked to provide further information in relation to the potential cost of the AML expansion. Based on data and analysis provided by PEXA and the Attorney General Department's (AGD) Impact Analysis of August 2024, the estimated cost of Tranche 2 is approx. $2bn per annum. The estimated cost to Queensland will be approximately $245m per annum as shown below.

Cost impact of AML Tranche 2 on Property sector (calculated from AG's Cost Impact Report)

Annual cost impact of Tranche 2 on Property sector (calculated from AG's Cost Impact Report)	$	**973,000,000**	per annum
FY24 Sale/ Transfer transactions recorded by PEXA		721,968	(PEXA coverage of Transfer transactions = 90%) Scale up to 100%
No. Sale/ Purchase transactions in Australia FY24		**802,187**	
Cost per property transaction	$	1,213	Per transaction
Cost for each side of the transaction (divide by 2)	$	**606**	for each of buy side and sell side

QLD impact	
QLD PEXA Sale/Purchases FY24 (85%)	171,783
Total QLD PEXA Sale/Purchases FY24	202,098
QLD Annual cost impact of Tranche 2 on Property Sector	$ 245,131,238

A detailed analysis can be found in Annexure A.

Conclusion

In view of the above, we maintain our recommendation that:

- the Attorney-General's Department explore technology solutions currently available and/or emerging in the market.
- amendments be made to the Bill that enable reporting entities to share and rely on information captured under the Customer Due Diligence obligations through a secure platform.

It is evident that technology solutions can deliver a multitude of benefits. This includes reduced cost and administrative burden, improved accuracy of risk assessment, enhanced compliance and greater trust among consumers.

We would also be pleased to discuss any of the matters raised further. Should you wish to do so, we invite you to contact Katrina Beavon, General Counsel and Company Secretary of the REIQ at

We confirm no aspect of this Submission is confidential and we consent to its publication.

Yours Sincerely

Antonia Mercorella
Chief Executive Officer

Annexure A

Cost burden to the property industry from AML Tranche 2

Cost burden to the property industry from Tranche 2 based on Attorney General's Cost Impact Analysis report of August 2024 (based on 10,000 Legal Practitioners and 36,408 Real Estate Agents) = $1.24Bn upfront, and $0.97Bn ongoing.

Annual costs ($m)

Year	0	1	2	3	4	5	6	7	8	9
Annual cost ($m)	$1,240	$973	$973	$973	$973	$973	$973	$973	$973	$973
10 year NPV (@7%)	7,582									

Analysis approach – how this finding was extracted from the ATG's AML Impact Analysis Report

1. **Impact Analysis Report - option 4.** The ATG's report evaluated 4 options, but the relevant one is Option 4 (Both simplify, clarify and modernise existing legislation, and expand reporting population to DNFBPs (Designated non-financial businesses and professions)
2. **Cost Impacts.** The core cost impact findings are summarised in Table 20 (page 118). While all of the figures shown are in NPV terms (10 years at a discount rate of 7%), these can be mathematically converted back to annual figures (Step 4 below). The cost impacts for Legal and Real Estate firms (two figures circled in red) equate to around 8.8Bn as a 10 year NPV, but these figures overstate the no. of legal firms involved in property transactions.
3. **Property Industry Impact.** The ATG's analysis assumptions for the number of Legal firms and Real estate agents is shown in table 26 on the right. They have identified the 'regulated' population of these two groups in the right-hand column. If we assume 10,000 legal practitioners of the total 17,059 are involved in property transactions (PEXA has ~10,000 practitioner users), we can scale down the Legal Services cost impact from Table 20 accordingly (ie. $2,883 x 10,000/17,059 = $1,690). This gives the a 10-year NPV for the property industry impacted businesses (10,000 Legal Practitioners and 36,408 Real Estate Agents) of $5,892 + $1,690 = 7.582bn.
4. **Converting NPV to annual impact.** Using Excel's NPV function and the discount rate of 7% used in the Impact Report, we can reverse-engineer the 10-year NPV to get the annual amounts shown above, ie. $1.24Bn in year 0 for setup, and an annual cost figure of $973m (detail overleaf)
5. **Benefits of a national system.** Leveraging a centralised national system for property transactions will reduce both the upfront and ongoing costs impacts of setting up and running AML processes, avoiding each of 36,000 Real Estate Agents and 10,000 Legal practitioners having to interpret the rules and develop and run their own AML program. Using an industry standardised system would reduce the cost and complexity burden for these small businesses, and provide improved data for law enforcement.

Table 20 | Estimated total Option 4 regulatory burden, by reform and industry over 10 years ($m, NPV)[169]

Reform area	Frequency	Accounting services	Legal services	Trust/ company services	Real estate	Dealers in precious metals and stones
Enrolment	Upfront	10	6	2	13	0
	Ongoing	0	0	0	0	0
AML/CTF Program	Upfront	267	172	88	445	6
	Ongoing	1,908	1,292	569	2,934	42
Customer Due Diligence	Upfront	188	188	67	364	5
	Ongoing	1,129	1,128	350	1,886	26
Reporting	Upfront	57	23	11	56	1
	Ongoing	56	22	13	56	2
Record-keeping	Upfront	40	40	23	111	1
	Ongoing	26	12	13	37	1
Total	Upfront[170]	562	429	191	989	13
	Ongoing	3,120	2,454	945	4,903	71
	Ten-year total	3,682	2,883	1,136	5,892	84

Table 26 | Estimated population of tranche two businesses

Industry	Total business population	Proportion of industry regulated [177]	Total regulated population
Accounting services	36,314	75%	28,223
Legal services	23,517	70%	17,059
Trust and company services	45,235	15%	7,057
Real estate	44,227	80%	36,408
Dealers in precious metals and stones	5,279	15%	812
Total	**154,572**		**89,557**

Analysis Spreadsheet

Total regulated legal firms	17,059
Legal firms involved in property transactions (PEXA users)	10,000

Scaling down Legal Services cost impact figures for the 10,000 Legal firms involved in property transactions

	Upfront	Ongoing	
Total for all Legal Services	429	2454	*From table 20 on right*
Impact for 10,000 Legal firms involved in property	251	1,439	*Scaled down by 10,000/17,059*

Converting NPV figures into annual figures

Annual costs (in nominal terms) $m

10,000 Legal Firms *Upfront* *Ongoing*

Year	*0*	*1*	*2*	*3*	*4*	*5*	*6*	*7*	*8*	*9*
Annual cost ($m)	$251	$221	$221	$221	$221	$221	$221	$221	$221	$221
		$1,439								
	$1,690									
10 year NPV (@7%)	$1,690	Discount rate 7%								

36,400 RE Agents *Upfront* *Ongoing*

Year	*0*	*1*	*2*	*3*	*4*	*5*	*6*	*7*	*8*	*9*
Annual cost ($m)	$989	$753	$753	$753	$753	$753	$753	$753	$753	$753
		4,903								
	$5,892									
10 year NPV (@7%)	$5,892	Discount rate 7%								

Total *Upfront* *Ongoing*

Year	*0*	*1*	*2*	*3*	*4*	*5*	*6*	*7*	*8*	*9*	
Annual cost ($m)	$1,240	$973	$973	$973	$973	$973	$973	$973	$973	$973	**Total annual cost impact on Property Industry**
		6,342									
	$7,582										
10 year NPV (@7%)	$7,582	Discount rate 7%									

Table 20 **| Estimated total Option 4 regulatory burden, by reform and industry over 10 years ($m, NPV)[169]**

Reform area	Frequency	Accounting services	Legal services	Trust/ company services	Real estate	Dealers in precious metals and stones
Enrolment	Upfront	10	6	2	13	0
	Ongoing	0	0	0	0	0
AML/CTF Program	Upfront	267	172	88	445	6
	Ongoing	1,909	1,292	569	2,924	42
Customer Due Diligence	Upfront	188	188	67	364	5
	Ongoing	1,129	1,128	350	1,886	26
Reporting	Upfront	57	23	11	56	1
	Ongoing	56	22	13	56	2
Record-keeping	Upfront	40	40	23	111	1
	Ongoing	26	12	13	37	1
Total	Upfront[170]	562	429	191	989	13
	Ongoing	3,120	2,454	945	4,903	71
	Ten-year total	3,682	2,883	1,136	5,892	84

Property Industry cost $m (10 yr NPV @7%)	**10,000 Legal Firms**	**36,400 RE Agents**	Totals
Upfront	251	989	1,240
Ongoing	1,439	4,903	6,342
Total	1,690	5,892	**7,582**