



14 October 2024

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

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

Dear Committee

RE: Anti-Money Laundering and Counter-Terrorism Financing Amendment Bill 2024

The Real Estate Institute of Queensland (the **REIQ**) welcomes the opportunity to provide a written submission in relation to the *Anti-Money Laundering and Counter-Terrorism Financing Amendment Bill 2024* (the **AML/CTF Bill**) introduced into Parliament on 11 September 2024.

About the REIQ

The REIQ is the peak industry body representing the real estate sector in Queensland. As the State's most trusted and influential advocate for real estate interests for more than 106 years, the REIQ's enduring purpose is to lead a sustainable industry which makes important contributions to government legislation and policy settings and advocates for balanced regulations for the benefit of all stakeholders in the housing sector.

The REIQ's vision statement, for the real estate profession, extends our support and expertise beyond our membership to the broader real estate profession and community. We believe everyone should be able to make educated, informed decisions about buying, selling or renting property and business in Queensland.

Stakeholder Consultation

The REIQ has actively participated in stakeholder consultation undertaken by the Attorney General's Department over the past eighteen months in relation to this proposed reform.

As well as participating in stakeholder meetings and workshops, the REIQ has provided two written submissions in response to the *Modernising Australia's Anti-Money Laundering and Counter-Terrorism Financing Regime* consultation.

We *enclose* a copy of both written submissions for your consideration, dated 26 June 2023 and 28 June 2024.

As noted in our past submissions, the REIQ supports the Government's commitment to protecting the integrity of the Australian financial system and improving Australia's AML/CTF regime to ensure it is fit-for-purpose, responds to the evolving threat environment, and meets international standards set by the Financial Action Task Force, the global financial crime watchdog and standard setter.



However, the REIQ is concerned about the proposal to extend the AML/CTF regime to real estate agents under the framework proposed by the AML/CTF Bill. We are particularly concerned about the financial and administrative burden it will create for real estate professionals and businesses in Queensland and throughout Australia. Additionally, we are concerned about the potential impact on property transactions and cost to the economy based on international experiences as outlined in previous submissions.

We acknowledge the difficulty in developing an appropriate legislative AML/CLF framework that meets the core objectives. We appreciate that it is challenging to balance Australia's efforts to prevent criminals from engaging in illegal activity and stopping funds from falling into the hands of terrorist organisations, whilst creating an ability to capture the information through day-to-day transactions that are currently not immediately available to the Government. Nonetheless, a balanced and practical approach remains critically important.

Real Estate Practice

Real estate practice in Australia varies between each State and Territory.

Unlike other states, real estate agents in Queensland possess the right to facilitate a contract of sale and/or lease to execution. This generally includes preparation and completion of:

- a) residential and commercial land sale contracts;
- b) residential and commercial tenancy agreements; and
- c) business sale contracts.

If real estate agencies (and business brokers) are to be captured by the AML/CTF obligations, this would impact millions of Australians who buy and sell property on both residential and commercial sales markets.

According to the forward estimates, the Queensland real estate industry contributes the most State taxes (estimated \$8 billion per year), surpassing all other sectors including coal.

Real estate is too important to the economy to introduce regulation that will unnecessarily stifle majority of transactions that do not fall within the definition of suspicious activity.

Importantly, the educational and training requirements to practice as a real estate agent vary across Australia. In some jurisdictions, the training requirements are very low and require the completion of only a few units of accredited training. In any event, across all Australian States and Territories, even the highest educational requirements will not, in our view, adequately equip real estate agents with the skill and knowledge required to properly identify and understand complex company structures and assessment of risks associated with AML/CTF requirements. Such analysis requires legal and/or financial and accounting related training.

Additionally, the majority of Queensland real estate businesses are independent and are not associated with a franchise model. Most real estate businesses are small in size, with less than 5 employees or workers. The cost and administrative time burden of complying with the regime will have a significant impact on real estate businesses. This was confirmed by the Attorney-General's Department Impact Analysis which estimated the annual cost burden to the property sector to be ~\$1b pa.



Many real estate businesses also lack the necessary tools and infrastructure to properly obtain and secure Personally Identifiable Information (PII) and other relevant information required to properly conduct the appropriate risk assessment. Without additional resources, these businesses are at a heightened risk of data breaches and unauthorised access. This vulnerability not only exposes sensitive client information to potential misuse but also undermines consumer trust and may lead to severe legal and financial repercussions. To mitigate these risks, we recommend that the Department support and/or invest in a solution that ensures the protection of PII and sensitive information throughout the AML/CTF compliance process.

Proposed Solution for Property Transactions

The REIQ supports a solution that adequately addresses the matters of key concern for the real estate sector and associated customers.

We support the development of a solution that meets the regime's objective and places the appropriate burden on real estate professionals without causing significant impacts, costs and delays to the facilitation of property transactions. Importantly, we reiterate the importance of utilising the appropriate professionals (legal/financial) to undertake the majority of due diligence requirements to meet AML/CTF compliance measures.

It is our view that a platform solution that enables real estate agents, legal professionals and financial professionals (tranche 2 entities) to share and rely on information is the most effective way of capturing tranche 2 entities within the AML/CTF regime. To this end, we note the following principles:

- **Cost and Compliance Reduction:** An information-sharing mechanism could cut customer due diligence duplication significantly. This will also transfer appropriate risk assessment to be completed by the appropriate professional.
- **Data Security and Compliance:** Enhancing the accuracy of Suspicious Matter Reports (SMRs) and reducing false positives can lower data breach risks and improve compliance with data privacy laws.
- **Mitigating Tipping Off Concerns:** A shared information model can prevent suspicion by hosting necessary information centrally and restricting access to authorised personnel only.

Accordingly, we recommend the following:

1. **Reliance Provisions:** We recommend that the reliance provisions with the AML/CTF Bill be amended to enable the tranche 2 entities to share information required under the regime. For example, we suggest that at minimum, verification of a client's identity be shared between the relevant participants in a real estate transaction to minimise, not only time and cost burden for the profession but also for the impacted consumer. In Queensland, verification of identity is completed by the real estate agent, legal professional and financial institution. Failing to streamline the verification process for identity checks would be a significant missed opportunity for the property industry. By not adopting a secure platform that professionals can rely on, we risk perpetuating inefficiencies and vulnerabilities in handling sensitive information. A streamlined, secure system would not only enhance the accuracy and speed of transactions but also bolster consumer trust by ensuring personal data is protected.
2. **Information Sharing:** We support a framework that enables tranche 2 entities within a property transaction to securely share information for the purpose of disclosing unusual activities, transactions and behaviour that may be relevant when assessing risk required under the regime. Providing tranche 2 entities with access to comprehensive and more



accurate data may uncover patterns and connections that might otherwise go unnoticed. This enhanced visibility is essential for detecting fraudulent activities, money laundering, and other criminal behaviors. By leveraging a secure platform for information sharing, we can ensure that sensitive data is protected while enabling professionals to collaborate effectively.

In our view, leveraging a secure platform for implementing compliance requirements is a crucial step towards modernising and safeguarding compliance of the AML/CTF regime.

The REIQ recommends that the Department explore technology solutions currently available on the market to address the concerns raised in this submission. By investing and enabling technology solutions, the Department can ensure compliance with data privacy regulations, improve the accuracy of risk assessment and foster greater trust among consumers. Leveraging these tools will not only mitigate existing vulnerabilities but also position the Department as a leader in adopting innovative and secure practices.

The REIQ would appreciate a further opportunity to discuss the practical aspects of agency practice and likely impacts of the AML/CTF regime.

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

Yours Sincerely

Antonia Mercorella
Chief Executive Officer



28 June 2024

Economic Crime Section
Attorney General's Department

By Email: economiccrime@ag.gov.au

Dear Sir/Madam

RE: Modernising Australia's anti-money laundering and counter-terrorism financing regime

The Real Estate Institute of Queensland (the **REIQ**) appreciates the opportunity to provide its written preliminary views on Australia's anti-money laundering and counter-terrorism financing regime (AML/CTF regime).

As noted in our Submission in relation to the first round of consultation undertaken, the REIQ supports the Government's commitment to protecting the integrity of the Australian financial system and improving Australia's AML/CTF regime to ensure it is fit-for-purpose, responds to the evolving threat environment, and meets international standards set by the Financial Action Task Force, the global financial crime watchdog and standard setter.

We are, however, concerned about the proposal to extend the AML/CTF regime to real estate agents.

We acknowledge the difficulty in developing an appropriate AML/CLF framework that meets the above objectives. We appreciate that it is challenging to balance Australia's efforts to prevent criminals from engaging in illegal activity and stopping funds from falling into the hands of terrorist organisations, whilst creating an ability to capture the information through day-to-day transactions that are currently not immediately available to the Government.

We are pleased with some of the changes and clarifications that have been implemented since the first round of consultation. In particular, we are pleased that it has been confirmed that residential tenancies will be exempted from the regime. We remain concerned, however, about the proposed extension of the regime to real estate businesses.

We are particularly concerned about the financial and administrative burden it will cause to real estate professionals and businesses in Queensland and throughout Australia.

Current AML/CTF Framework

The current framework set out under the Anti-Money Laundering and Counter-Terrorism Financing Act 2006 (Act) and Anti-Money Laundering and Counter-Terrorism Financing Rules (Rules) is designed to prevent money laundering and the financing of terrorism by imposing a number of obligations on the particular at-risk sectors that deliver designated services.



Some of the obligations include

- Identification obligations whereby a business must collect and verify certain 'know your customer' (KYC) information;
- The requirement to implement a AML/CTF program within the business for the purpose of identifying, mitigating and managing AML/CTF risks;
- Strict reporting obligations; and
- Record-keeping requirements.

Additionally, if a business is required to comply with the AML/CTF Act, then they are also obligated to comply with the *Privacy Act 1988* (Cth) when handling personal information collected for the purposes of compliance with their AML/CTF Act obligations, regardless of if they were otherwise exempt.

Failing to comply with the AML/CTF Act can also carry heavy civil penalties including fines up to \$4.2 million for an individual and \$21 million for a reporting entity.

Real Estate Practice in Queensland

Real estate practice in Australia varies between each State and Territory.

Unlike other states, real estate agents in Queensland can facilitate a contract of sale. This generally includes preparation and completion of:

- a) residential and commercial land sale contracts;
- b) residential and commercial tenancy agreements; and
- c) business sale contracts - we would appreciate clarification on whether the proposed obligations would also extend to a sale of business.

If real estate agencies are to be captured by the AML/CTF obligations, this would impact millions of Australians who buy and sell property on both residential and commercial sales markets. For context, in Queensland, there were 114,795 residential property sales in the 12 months prior to March 2024.

The educational and training requirements to practice as a real estate agent vary across Australia. In some jurisdictions, the training requirements are very low and require the completion of only a few units of accredited training. In any event, across all Australian States and Territories, even the highest educational requirements will not, in our view, adequately equip real estate agents with the skill and knowledge required to properly identify and understand complex company structures and assessment of risks associated with AML/CTF requirements. Such analysis requires legal training and/or accounting related training. The majority of Queensland real estate businesses are independent and not associated with a franchise model. Further, most real estate businesses are small in size, with less than 5 employees or workers.



Our recommendations are summarised below and outlined in further detail in our attached submission. We recommend:

1. That a platform/portal for real estate agents to provide key information be established.
2. That real estate agents be required to undertake mandatory verification of identity of all parties involved in a real estate transaction.
3. Following the above, the legal profession through the conveyancing process be responsible for the more detailed risk assessments required under the framework using existing platforms such as PEXA.

The REIQ would appreciate an opportunity to meet with the Department to discuss the practical aspects of agency practice.

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

Yours Sincerely

Antonia Mercorella
Chief Executive Officer



Reforming Australia's anti-money laundering and counter-terrorism financing regime

Submission to
Attorney General's Department

The Real Estate Institute of Queensland (REIQ)

The REIQ is the peak body representing real estate professionals across Queensland. As the State's most trusted and influential advocate for real estate business interests and private property investor rights for more than 106 years, the REIQ remains committed to ensuring the highest levels of professionalism and good governance are achieved through regulatory compliance and the advancement of best practice standards of professional conduct.

The REIQ's enduring purpose is to lead a sustainable industry which continues to make significant contributions to the Queensland economy and to strengthen conditions for those working within the industry. Above all, the peak body aims to:

- Make important contributions to government legislation and policy settings;
- Advocate for balanced regulations for the benefit of all stakeholders;
- Provide industry-leading training for real estate professionals;
- Deliver timely, innovative and market-driven education programs;
- Promote risk management and increase professional competence;
- Implement effective and compliant professional standards; and,
- Contribute to substantial industry research and development.

Membership and customer representation includes over 30,000 property professionals. This includes principal licensees, salespeople, property managers, auctioneers, business brokers, buyers' agents, residential complex managers, and commercial and industrial agents in Queensland.

WE HELP MORE THAN OUR MEMBERS

The REIQ's vision statement, for the real estate profession, extends our support and expertise beyond our membership to the broader real estate profession and community. We believe everyone should be able to make educated, informed decisions about buying, selling or renting property and business in Queensland.

Proposed Designated Services – Real estate professionals

We note *Paper 1: Further Information for Real Estate Professionals (Paper 1)* sets out a detailed proposal in relation to the types of designated services that real estate professionals provide which would be captured by the AML-CTF regime.

We welcome the amended proposed definition of real property outlined in Paper 1, that has removed services relating to residential tenancies, property management and leasing of commercial premises.

Proposed designated service 1 – Brokering the sale or transfer of real property on behalf of one or more sellers, in the course of carrying on a business. The customer is the seller of the real property.

The primary contractual relationship in a real estate transaction is between the seller and the real estate professional. The seller engages the services of the real estate professional, thus forming a direct contractual relationship that may trigger the AML/CTF obligations and makes them a critical point for monitoring potential money laundering or terrorism financing activities.

Subject to our comments in this submission, we agree that it is appropriate for AML-CTF obligations be triggered for representatives of sellers in real estate transactions. It is appropriate for the seller to be the relevant customer because they are entering into a contract to engage the services of the real estate professional.

Proposed designated service 2 – brokering the purchase or transfer of real property on behalf of one or more buyers, in the course of carrying on the business. The customer is the buyer of the real property.

We do not agree that it is appropriate for agents to conduct Customer Due Diligence (CDD) on buyers of real property, unless the agent is engaged contractually by the buyer to perform property services for that buyer to locate and purchase property on their behalf (an acting buyer's agent). Extending AML/CTF obligations to buyers would significantly increase the compliance burden on real estate professionals. This could complicate the transaction process, increase costs, and delay transactions without a proportionate benefit in terms of detecting and preventing illegal activities.

Under the New Zealand framework, sales agents are only required to conduct customer due diligence on the parties that are appointing them to provide property services. This approach is preferred with respect to the real estate sector in Australia. Furthermore, buyers are already subject to various financial checks by financial institutions, such as banks and mortgage lenders, which are also bound by AML/CTF regulations. This existing scrutiny reduces the need to extend AML/CTF obligations specifically to buyers within the real estate context.

If the Department elects to maintain its position and require real estate professionals to assess buyers, which we are opposed to. This should be limited to once the buyer has executed the contract for sale. This will minimise the cost and administrative burden of assessing every prospective buyer.

Practical Concerns - Auctions

Initial Customer Due Diligence (CDD) as outlined in Item 3 below, must be completed before the provision of a designated service. This will mean that AML/CTF obligations will be triggered prior to an auction and would therefore extend to all potential/registered bidders at an auction. This would impose a significant burden on both the bidders and real estate professional.

Real estate professionals would be required to conduct extensive due diligence on all potential bidders, including verifying identities, assessing the sources of funds, and continuously monitoring for suspicious activities. In the context of an auction, this is highly impractical and will significantly impact the auction process and associated administrative requirements.

It is common for bidders to arrive while the auction is underway or bid via a representative, and depending on the market, the agent could expect a large number of bidders attending the auction. Consequently, managing the AML/CTF requirements in such a dynamic and high-volume environment would be challenging and we submit that it would be unreasonable to expect an agent to conduct CDD on each potential bidder of an auction.

Auctions, by their nature, result in unconditional contracts, and it would be unreasonable to make these contracts subject to satisfactory Customer Due Diligence (CDD). The immediacy and finality of auction sales are integral to their appeal and efficiency. Introducing a requirement for satisfactory CDD prior to contract finalisation would undermine the very nature of auctions. This would lead to delays, legal complications, and a potential decrease in bidder participation, ultimately diminishing the effectiveness and appropriateness of auctions as a method for property sales.

Proposed Designated Services – Professional Services

Proposed designated service 2 – Preparing for or carrying out transactions on behalf of a person to buy, sell or transfer legal entities in the course of carrying on a business. The Customer is the person.

This proposed designated service extends to business brokers. We submit that business brokers, legal practitioners are already required to undertake client identification and conflict checks. Furthermore, financial institutions are already regulated under the AML/CTF regime. Accordingly, we submit that further consideration of the transactions captured by this designated service be conducted to ensure it does not capture insignificant business transactions that would unnecessarily burden small businesses.

Proposed AML-CTF Obligations

We provide our comments below in relation to each of the proposed AML/CTF obligations that will be imposed on real estate businesses:

1. Enrol with AUSTRAC

Subject to our comments above, the REIQ supports the proposal that that any real estate business that provides a designated service will be a reporting entity that is required to enrol with AUSTRAC.

2. Develop and maintain an AML/CTF program tailored to your business

It is proposed that reporting entities will need to design and implement an AML/CTF program tailored to their business.

We do not agree with placing the onus on real estate business owners to subjectively decide on the level of risk they believe is associated with a particular client based on the characteristics of a transaction. This approach can lead to inconsistent and potentially biased assessments, as different business owners may have varying levels of experience, knowledge, and interpretation of risk factors. It places an undue burden on real estate professionals, diverting their focus from their primary responsibilities and potentially exposing them to legal and regulatory risks if their judgments are later questioned. Instead, a standardised and objective framework for risk assessment should be established to ensure uniformity and fairness in applying AML/CTF obligations across the industry.

Although this may be less onerous for an agency that belongs to a business group, the majority of real estate businesses (at least in Queensland) are independent small-medium businesses that would not fall within a business group.

Additional support must be provided to small-medium businesses that do not have the same level of sophistication, systems and resources that may be required to fulfill their obligations as a reporting entity.

3. Conduct customer due diligence

It is proposed that varying levels of client identification tasks would be undertaken depending on the relevant customer. We presume that identification requirements for individual customers would be less prescriptive than other types of entities such as company, partnership or trust structures.

We foresee customers (sellers and buyers) being unprepared to provide real estate professionals with the level of information that is proposed under the AML/CTF regime. Parties will also need to supply information to their banks and solicitors acting for them in the relevant transaction. If the threshold for CDD is too prescriptive, we predict widespread consumer backlash.

For these reasons, it is essential that the Department:

- clearly define how customer due diligence is to be conducted in a real estate context for simplified, standard and enhanced CDD, for each type of entity;
- provides ample community education to ensure that customers are generally familiar with the new AML/CTF requirements for real estate transaction;
- clarify the triggers requiring a reporting entity to undertake a formal AML/CTF risk assessment;
- strongly consider PEXA's recommendations to allow for:¹
 - (a) reliance between reporting entities to a property transaction (e.g. where parties use a common platform that meets the requirements of an entity's AML/CTF compliance); and
 - (b) information sharing to be permitted between parties to the extent necessary to fulfill their obligations.

¹ PEXA Submission 13 June 2024, page 3.

In New Zealand, we understand that a central repository of information is being considered however is not currently available. Parties instead seek client consent to share information via email to other relevant reporting entities. With the current risk of exposure to cyber-attacks and data breaches, we encourage the Department to consider existing platforms available to the industry that would reduce the risk of personal information being unnecessarily and inadvertently being exposed. We also support New Zealand's current CDD framework which consists of 3 tiers:

- (a) Simplified – targeted at lower risk non-individual entities
- (b) Standard – targeted at low/medium risk individuals, beneficial owners, politically exposed persons (PEPs) and non-individual entities; and
- (c) Enhanced – targeted at high-risk individuals, beneficial owners PEPs and non-individual entities.

The REIQ supports the Department's intent to leverage existing systems and controls to meet the proposed obligations. We believe that the current Verification of Identity (VOI) options can support the AML/CTF regime. These VOI measures are already well-established within the real estate sector and provide a robust framework for verifying the identities of clients.

Furthermore, electronic conveyancing software available in the market can be leveraged to support the AML/CTF regime effectively. These platforms already facilitate secure and streamlined property transactions, offering built-in features for identity verification and document management. By integrating AML/CTF CDD into electronic conveyancing systems, real estate professionals can automate the due diligence process, ensuring that all necessary verifications and monitoring are conducted appropriately. This not only reduces the administrative burden but also enhances the accuracy and reliability of compliance efforts by reporting entities.

A key benefit of leveraging existing systems to meet CDD obligations, is the reduction of costs incurred by each professional acting on behalf of the consumer. We understand that in New Zealand, the average estimated cost of compliance for lawyers and conveyancers is \$37.76 per client, while real estate professionals face an average cost of \$355.88 per transaction². As noted previously, most real estate businesses are small in size and additional costs of this nature would be significant to small enterprises.

We are concerned that similar exorbitant costs will become applicable to real estate businesses in Australia. For many businesses, this cost will not be sustainable, and will likely be passed on to the consumer. If the real estate professional can rely on CDD automated through electronic conveyancing processes, the costs of compliance should be more tenable.

4. Conduct ongoing customer due diligence

It is proposed that real estate professionals would have ongoing obligations to monitor their client's risk profiles over time as well as client behaviour that may be unusual or suspicious. This involves monitoring transactions and considering if a client's identification will need to be re-verified.

It is proposed that CDD obligations may vary depending on whether the designated service is an occasional transaction or ongoing business relationship. This concept needs to be further considered in a real estate context.

² New Zealand Ministry of Justice (2022) *Report on the review of the Anti-Money Laundering and Counter Financing of Terrorism Act 2009*

Guidance on what would vary a risk profile in the context of AML/CTF compliance is crucial for real estate professionals to effectively assess and manage risks associated with their clients and transactions. We request that the Department provide prescriptive guidance in order for real estate professionals to appropriately identify the patterns that would be of interest to AUSTRAC.

5. Report certain transactions and suspicious activity

It is proposed that real estate professionals will need to:

- submit a Threshold Transaction Report for any transaction with a client involving \$10,000 or more in cash;
- submit a Suspicious Matter Report if the agent suspects on reasonable grounds that a client is not who they claim to be or there may be a criminal activity.

In real estate transactions, a 'cash' payment generally refers to a payment where funds are coming directly from the client without external financing.

This will not usually involve physical cash, but funds that are provided via bank cheque or electronic funds transfer via a parties' solicitor's trust account. Deposits are typically over \$10,000 and are 'cash' payments paid in this way. Parties may also pay the balance purchase price at settlement in this way.

It is unclear whether real estate professionals will need to report transactions where a buyer is purchasing a property with cash. We presume the policy objective is to only report payments where physical cash is used and suggest that this is clarified in the context of real estate as agents are likely take a different interpretation based on industry language.

We are concerned with the requirement for real estate agents to know the parameters of what 'suspicious client behaviour' may be.

Section 41 of the AML/CTF Act³ requires a reporting entity to provide AUSTRAC with a suspicious matter report (SMR) within 3 business days if, the reporting suspects on reasonable grounds any of the matters set out in s41(1)(d)-(j) and:

- (a) the reporting entity commences or proposes to provide a designated service to a person;
- or
- (b) a person requests that a reporting entity provide a service that it ordinarily provides; or
- (c) a person inquires whether the reporting entity would be prepared to provide a service of a kind the reporting entity ordinarily provides.

We submit that some of the grounds contemplated by the Act impose an onus on real estate professionals to seek information they would otherwise require in practice. We request that guidelines be developed specific to the real estate industry to assist real estate professionals to appropriately provide the relevant SMR.

It is also critical that real estate professionals are afforded statutory protections from any claims that may arise in connection with the disclosure requirements that are imposed on them. It is unreasonable for real estate professionals to be exposed to legal risks and penalties due to the AM/CTF requirements.

³ Anti-Money Laundering And Counter-Terrorism Financing Act 2006

6. Make and keep records

It is proposed that real estate professionals would need to keep and store detailed records about customer due diligence measure that are undertaken. We do not object to this, provided that guidance is offered to real estate business to assist with the facilitation of these requirements.

Existing customers

The Department has requested feedback from stakeholders on what timeframes might be suitable for all pre-commencement customers to undergo a risk rating, and to transition medium and high-risk customers to regular customers under the AML/CTF regime.

We recommend that the Department address the timeframe for all pre-commencement customers to undergo a risk rating and transition medium and high-risk customers to regular status under the regime on a case-by-case basis. This approach ensures flexibility and acknowledges the varying complexities and risk profiles inherent in different client relationships and transactions. Minimum requirements should include conducting a risk assessment whenever a new designated service is provided. This targeted approach allows for thorough evaluation tailored to specific circumstances, ensuring effective risk management while minimising unnecessary administrative burden on real estate businesses. The REIQ welcomes any opportunity to work with the Department on these specific issues.

Implementation

Given the importance of real estate to the Australian economy, it is essential that these laws strike the right balance and are implemented in an appropriate and proportionate manner.

It is noted in Paper 1, that the AML/CTF regime would come into effect at a later date to ensure real estate professionals (as well as the other tranche two sectors) have sufficient time to adapt to the new requirements.

A carefully considered implementation plan featuring ample resources and supportive infrastructure provided by the Australian Government is vital. Property transactions are critical to the economy of Australia and any stifling or undue disruption would have severe consequences for both consumers and the Government that relies heavily on taxes from the property sector.

It is noted that AUSTRAC will work closely with the real estate sector to help agents understand and meet AML/CTF obligations under the regime. To that end, we welcome the opportunity to work closely with AUSTRAC to educate and prepare the Queensland real estate sector in relation to the regime.

In New Zealand, the regulator created a factsheet that sales agents can provide to their clients when discussing CDD to clarify what information the agent is requesting and why they require the relevant information. We consider something similar will be necessary in Australia. Sufficient community education must also be prioritised by the Australian Government.

Learnings from New Zealand

We understand a similar AML/CTF regime was introduced in New Zealand in 2019. Since its introduction, the New Zealand model has been subject to a number of reforms on a yearly basis. These reforms have ranged from minor clarifications to remove inconsistent practices across the relevant sectors, to larger fundamental reforms in response to shortcomings of the initial regime.

Australia is in the unique position of learning from the implementation of the AML/CTF regime in New Zealand. Currently, we understand the relevant Government department is undertaking an extensive assessment of the AML/CTF regime in New Zealand which will be followed by sector-specific assessments.

The REIQ has recently engaged with the Real Estate Institute of New Zealand (REINZ) on this topic, to understand the challenges that real estate professionals have experienced in New Zealand since the introduction of the regime.

We understand that real estate businesses in New Zealand find the regime to be too onerous, and they have struggled to source experienced compliance officers who were well versed in AML/CTF requirements. This had an impact on internal business functions and business' ability to meet their obligations as a reporting entity.

In our view, we should seek to understand the learnings from the implementation of AML/CTF regime in New Zealand to ensure that Australia is not in the same position where there is a need to carry out rolling legislative reform.

Recommendations

The REIQ supports the proposed establishment of a clear overarching requirement that a reporting entity must take appropriate steps to identify, assess and understand the money laundering and terrorism financing risks it faces. It is our view however, that further consideration should be given to how the regime will impact the real estate profession. We support the extension of the regime to the real estate sector subject to our comments in this Submission.

We recommend the establishment of a platform/portal whereby real estate agents may register the key details and terms of real estate transactions and provide the Department (which extends to other relevant entities such as Australian Taxation Office, Australian Federal Police and Australian Transaction Reports and Analysis Centre) with an ability to record, track and enforce fraudulent activities as required under the Act.

We would also support the introduction of mandatory verification of identity of all parties involved in a transaction. Current requirements under s19 & 20 of the *Property Occupations Regulation 2014* (Qld), require a real estate agent and auctioneer to take reasonable steps to find out or verify the ownership of the property and property description. Similar provisions exist in various state based real estate legislation. We recommend that this requirement be extended to all parties and include the verification of both parties in a real estate transaction.

In addition, we recommend that the regime only require real estate agents to verify the identity of the parties to a transaction and that the onus be passed on to the relevant parties' legal representatives to complete any further action as required under the regime including:

- determining risk level, having regard to the nature, size and complexity of its business;
- documenting its risk assessment methodology; and
- reviewing and updating risk assessment when there is a change to its circumstances which affects its risk exposure.

This can be achieved through leveraging existing platforms like PEXA which already meets onerous requirements imposed by the Australian Registrars' National Electronic Conveyancing Council (ARNECC). The nominated legal representative of the parties may complete the requirements as outlined above through this platform. Should a nominated legal representative not be appointed, we submit that the Department should bear the onus of investigating the transaction through financial providers as it deems appropriate.

Finally, we propose consideration is given to advocating for and educating the industry about the use of electronic verification of identity in support of the AML/CTF regime and the provision of cost-effective tools and resources to support small businesses to implement the objectives of the regime.

We look forward to the opportunity to further elaborate on the above recommendations and other aspects of our submission. It is important that the Department understands the practicalities and intricacies of real estate practice in different jurisdictions. By working hand in hand with the REIQ, the proposed new regime can be implemented in a way that minimises disruption to real estate transactions and real estate businesses whilst meeting the objectives of the AML framework.



26 June 2023

Economic Crime Section
Attorney General's Department
By Email: economiccrime@ag.gov.au

Dear Sir/Madam

RE: Modernising Australia's anti-money laundering and counter-terrorism financing regime

The Real Estate Institute of Queensland (the **REIQ**) appreciates the opportunity to provide its written preliminary views on Australia's anti-money laundering and counter-terrorism financing regime (**AML/CTF regime**). We also appreciate the Department allowing us to participate in detailed in-person stakeholder consultation.

We support the Government's commitment to protecting the integrity of the Australian financial system and improving Australia's AML/CTF regime to ensure it is fit-for-purpose, responds to the evolving threat environment, and meets international standards set by the Financial Action Task Force, the global financial crime watchdog and standard setter.

We are however, concerned about the proposal to extend the AML/CTF regime to certain high-risk professions which include lawyers, accountants, trust and company service providers, real estate agents and dealers in precious metals and stones (also known as tranche-two entities).

We acknowledge the difficulty in developing an appropriate AML/CLF framework that meets the above objectives. We recognise that it is challenging to balance Australia's efforts to prevent criminals from engaging in illegal activity and stopping funds from falling into the hands of terrorist organisations, whilst creating an ability to capture the information through day to day transactions that are currently not immediately available to the Government.

We are however, deeply concerned about the proposed extension of the regime to real estate businesses and the impractical expectations that arise under the proposed regime. We are particularly, concerned about the financial and administrative burden it will cause to real estate professionals and businesses in Queensland and throughout Australia.

Current AML/CTF Framework

The current framework set out under the *Anti-Money Laundering and Counter-Terrorism Financing Act 2006 (Act)* and *Anti-Money Laundering and Counter-Terrorism Financing Rules (Rules)* is designed to prevent money laundering and the financing of terrorism by imposing a number of obligations on the particular at-risk sectors that deliver designated services.

Some of the obligations include

- Identification obligations whereby a business must collect and verify certain 'know your customer' (KYC) information;



- The requirement to implement a AML/CTF program within the business for the purpose of identifying, mitigating and managing AML/CTF risks;
- Strict reporting obligations; and
- Record-keeping requirements.

Additionally, if a business is required to comply with the AML/CTF Act, then they are also obligated to comply with the *Privacy Act 1988* (Cth) when handling personal information collected for the purposes of compliance with their AML/CTF Act obligations, regardless of if they were otherwise exempt.

Failing to comply with the AML/CTF Act can also carry heavy civil penalties including fines up to \$4.2 million for an individual and \$21 million for a reporting entity.

Real Estate Practice in Queensland

Real estate practice in Australia varies between each State and Territory.

Unlike other states, real estate agents in Queensland can facilitate a contract¹. This generally includes preparation and completion of:

- (a) residential and commercial land sale contracts;
- (b) residential and commercial tenancy agreements; and
- (c) business sale contracts - we request clarification on whether the proposed obligations would also extend to a sale of business.

Unlike other sectors, real estate is uniquely high volume and impacts most Australians in some way. If real estate agencies are to be captured by the AML/CTF obligations, this would impact millions of Australians who rent residential properties, business owners who lease commercial premises and parties who buy and sell property on both markets.

In Australia, 3,086,964 properties are rented on the residential market, with 7,023,923 Australians being renters². Queensland alone accounts for over 624,000³ properties with around 1.5 million individual renters. With tenancies lasting on average between 6 months to two years, imposing the AML/CTF requirements on real estate agencies would be extremely onerous given the frequency of transactions and volume of persons that they deal with, particularly in the residential tenancy sector.

The educational and training requirements to practice as a real estate agent vary across Australia. In some jurisdictions, the training requirements are very low and require the completion of only a few units of accredited training. In any event, across all Australian States and Territories, even the highest educational requirements will not, in our view, adequately equip real estate agents with the skill and knowledge required to properly identify and understand complex company structures and assessment of risks associated with AML/CTF requirements. Such analysis requires legal training and/or accounting related training.

¹ Legal Profession Act 2007 (Qld) Section 24.

² ABS Census 2021

³ RTA Annual Report FY2021/22, page 7



Recommendation

Whilst we support the proposed establishment of a clear overarching requirement that a regulated entity must take appropriate steps to identify, assess and understand the money laundering and terrorism financing risks it faces, it is our view that this requirement should not be extended to real estate agents.

We submit that given the volume of transactions and impracticalities of complying with the regime, other solutions should be considered to achieve the objectives of the regime.

We recommend the establishment of a platform/portal whereby real estate agents may register the key details and terms of real estate transactions and provide the Department (which extends to other relevant entities such as Australian Taxation Office, Australian Federal Police and Australian Transaction Reports and Analysis Centre) with an ability to record, track and enforce fraudulent activities as required under the Act.

We would also support the introduction of mandatory verification of identity of all parties involved in a transaction. Current requirements under s19 & 20 of the Property Occupations Regulation 2014 (Qld), require a real estate agent and auctioneer to take reasonable steps to find out or verify the ownership of the property and property description. Similar provisions exist in various state based real estate legislation. We recommend that this requirement be extended to all parties and include the verification of both parties in a real estate transaction.

In addition, we recommend that the regime only requires real estate agents to verify the identity of the parties and that the onus be passed on to the relevant parties' legal representatives to complete any further action as required under the regime including:

- determining risk level, having regard to the nature, size and complexity of its business;
- documenting its risk assessment methodology; and
- reviewing and updating risk assessment when there is a change to its circumstances which affects its risk exposure.

This can be achieved through the establishment of a platform which allows real estate agents to disclose fundamental information within a real estate transaction which may include:

- Details of the Seller and Buyer;
- Purchase Price and deposit amounts;
- Whether the contract is subject to finance;
- Property Address;
- Nominated legal representative.

The nominated legal representative of the parties may then complete the requirements as outlined above. Should a nominated legal representative not be appointed, we submit that the Department should bear the onus of investigating the transaction as it deems appropriate.

Finally, we propose consideration is given to advocating for and educating the industry about the use of electronic verification of identity in support of the AML/CTF regime and the provision of cost effective tools and resources to support small businesses to implement the objectives of the regime.



We would welcome an opportunity to further elaborate on the above recommendation and assist the Department with developing a framework that support the objectives of the regime within real estate transactions in all states and territory.

Yours sincerely

Antonia Mercorella
Chief Executive Officer