

14 October 2024

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

Dear Sir/Madam,

### **Re Anti-Money Laundering and Counter-Terrorism Financing Amendment Bill 2024**

The Australian Institute of Conveyancers (NSW) Division Limited (**AICNSW**) welcomes the opportunity to provide a submission to the Legal and Constitutional Affairs Legislation Committee in considering the provisions of the Anti-Money Laundering and Counter-Terrorism Financing (**AML/CTF**) Amendment Bill 2024.

AIC NSW is the industry body representing over 1,000 licenced conveyancers in New South Wales including approx. 550 conveyancing businesses/practices who undertake a significant portion of property conveyancing transactions in New South Wales.

The scope of work, authorised to a NSW conveyancer is defined in s (4) of the Conveyancers Licensing Act NSW (**CLA**) as, the legal work of creating varying modifying or extinguishing a legal or equitable interest in any transaction and includes the drawing of any document and the giving of legal advice to any such transaction. The legal work, s (4) (4) CLA, is equivalent to that of an Australian legal practitioner and consequently NSW Licensed conveyancers have the same professional obligations and responsibilities as that of a NSW solicitor practising conveyancing law.

AICNSW provided a submission to the Attorney Generals public consultation in June 2024. As the AML/CTF legislation is still gestating and subject to further consultation, we have not been too prescriptive as to the issues and we would recommend being further consulted in the design of the rules and processes to bring to life the legislation.

We would like to highlight the areas that we consider the Committee should particularly focus its attention.

### **Change Management:**

The Conveyancing industry has experienced momentous change with the introduction of electronic conveyancing in the past ten years. Further changes occur regularly with the next scheduled for 1/1/2025 being the Australian Taxation Office changes to requirement that a Foreign Resident Capital Gains Withholding Certificate be obtained for any property transaction (currently limited to those with a value of \$750,000) or above.

Most conveyancing businesses in NSW are classified as sole practitioners or small to medium size firms employing up to ten people. These are atypical of small to medium sized businesses having limited access to surplus resources to accommodate change with any change managed in house and most often by the business principals.

All reforms involve change, but also open practitioners up to new risk areas. Unfortunately, many recent reforms have seen Government outsource their risk, which Government previously carried, to these small businesses, who are the least prepared or resourced to effectively cope with such changes.

The proposed AML/CTF Tranche 2 requirements which will be introduced to conveyancing practitioners, whilst obviously warranted and with beneficial objectives, will need to be heavily supported and have dedicated support channels for all new PSP's covered by the legislation.

### **Timing of change:**

AICNSW and its members are apprehensive as to the proposed timing for the introduction of the AML/CTFD obligations. Additionally, as mentioned above, many of our business members are operating with change fatigue. The main reaction when AML/CTF is discussed at industry meetings is *"I may as well retire /close my business now."*

While AUSTRAC has indicated that PSPs would be given adequate time to plan and prepare for regulation under the AML/CTF regime we have previously suffered from inadequate preparation and delivery of reforms within the conveyancing industry.

As an example, NSW Revenue introduced a new revenue requirement in 2016, which was rushed in and inadequately supported and consequently seen the Professional Indemnity Insurance premiums for licensed NSW conveyancers increased by 59% over three years to 2024. These claims continue to this day.

Given the significance of these changes for our members and the fact that they are small businesses and need to develop appropriate compliance frameworks, educate and train staff, introduce new compliance processes we recommend the timing of the reform process be further consulted and agreed with industry.

### **Consistency and reliance across processes:**

We recommend alignment between standard, or simplified AML/CTF customer due diligence obligations and the verification of identity standards (VOI) required by ARNECC in electronic conveyancing, to include a 'reasonable steps' measure as set out in the ARNECC Model Participation Rules (MPR) and a 'safe harbour' interpretation. Safe harbour is a particularly essential element for smaller and less well-resourced practices to achieve compliance and manage their risk on the AML/CTF obligations.

A property transaction involves multiple service providers: financiers/banks, mortgage brokers, real estate agents and conveyancers/lawyers and each of these may have overlapping obligation under Tranche 2 reforms. We recommend a very thorough industry analysis of the ability to rely on the AML/CTF Customer Due Diligence (**CDD**) assessment of other parties within a transaction to ensure that the appropriate due diligence is performed. However, what is important to small business and the successful integration of the reforms into industry practice is that unnecessary duplication of the CDD process and the unnecessary cost of such duplication is not imposed on the consumer.

As the majority of property transactions in NSW are now settled by the electronic settlement platform PEXA and most practitioners also utilise practise management software (PMS) we would anticipate that further consultation with all stakeholders could generate a centralised tool to assist conveyancing practitioners to undertake the required customer due diligence (CDD) and risk assessment in an effective and uniform manner. This centralised tool may also assist in record management and storage and provide a gap analysis feature to provide inbuilt compliance tracking that would be greatly beneficial to small business practitioners.

We have reviewed the PEXA Attorney General submission which included a suggested model, and we would be happy to work with other industry stakeholders to develop a model that could assist conveyancing practitioner on an industry wide basis.

#### **Public Education.**

Often underestimated when reforms are being implemented to established transaction processes is the time (investment) taken in explaining the new requirements to the public/previous clients. Clients who have previously purchased or sold properties when confronted with the new AML/CTF requirements will naturally question the conveyancing practitioner as to why this additional information is being sought for this transaction as it had not been required in the past.

Past reform initiatives have experienced difficulties when introduced to an uninformed, inexperienced public which adds further stress and time-consuming effort in transactions which is not recompensed to the business. It is not a government “call centre operator” or “service centre” staff member that will encounter the question from the public asking why the new AML/CTF procedure is required. It is the conveyancing practitioner.

The introduction several years ago of verification of identity (VOI) created additional work for conveyancing practitioners explaining to their clients why they required original identification documents to be presented for the VOI process to be undertaken. Conveyancing practitioners must increase their fees to accommodate such additional time, and any good business would pass that cost onto the client.

Accordingly, to mitigate the time required to explain these new AML/CTF we would recommend and expect a comprehensive public education programme to be delivered in the lead up to the reform and the ability for clients to be referred to websites and other education collaterals to inform them of what the Government is expecting under AML/CTF.

Finally, we would reiterate that the bulk of our membership that operate conveyancing practices are small businesses that are delivering an essential service to the NSW property industry. Many of our business owner members also have employees, and they will need to

ensure that appropriate education is provided to their staff, and this should be factored into the reform program delivery design.

We appreciate the opportunity of providing this feedback from an important small business segment servicing the significant NSW property industry. We would be happy to elaborate on any of the above observations and would be happy to be included in any industry working group created to further develop an industry implementation framework to ensure the successful delivery of these important reforms.

Yours sincerely,

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CEO

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President