Australian Banking Association

Submission of the

Australian Banking Association

to the

Senate Legal and Constitutional Affairs Legislation Committee

inquiry into the

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

11 October 2024

Australian Banking Association

The Australian Banking Association (**ABA**) welcomes the opportunity to provide a submission to the Senate Legal and Constitutional Affairs Legislation Committee inquiry into the *Anti-Money Laundering and Counter-Terrorism Financing Bill 2024*.

The ABA has long supported two key policy goals for AML/CTF reform:

- **Simplification of the AML/CTF Act**
  The adoption of a principles-based framework will allow all participants in the AML/CTF ecosystem to clearly understand their obligations while developing and applying individual AML/CTF policies and procedures best-suited to the circumstances and specific money-laundering, terrorism- and proliferation-financing risks associated with the designated services provided by each entity. A principles-based model is more flexible in the face of changing technology and business models and will allow a greater focus on the effectiveness of AML/CTF outcomes rather than administrative compliance processes.

- **Extension of the AML/CTF Act to "tranche 2" sectors**
  Extension of the AML/CTF Act to real estate professionals, professional service providers and other 'tranche 2' entities will address the significant ML/TF risks associated with services provided by these sectors and improve the robustness and completeness of Australia's overall response to AML/CTF risks while meeting Australia's international obligations under the FATF framework.

The ABA has welcomed the opportunity to work constructively with the Attorney-General's Department through the consultation process to contribute to the development of the reform proposals.

Recognising that changing the complex, often arcane, and deeply self-referential structure of the AML/CTF Act and associated Rules is extraordinarily challenging, the ABA is of the view that the overall reform package as reflected in the *Anti-Money Laundering and Counter-Terrorism Financing Bill 2024* goes a long way to meeting the ambitious goals for AML/CTF reform. Notably the proposed reforms address many of the industry pain points that have accumulated in the years since AML/CTF reform was last attempted.

One significant constraint in providing feedback on the AML/CTF Bill is the lack of access to even a draft version of the accompanying AML/CTF Rules. The principles-based approach that is sought to be adopted as a key component of the reform process necessarily requires detailed elaboration of some aspects in the Rules. As these are not yet available for public consultation, much of the feedback on the Bill is necessarily limited to theoretical impacts only and the full impact of some of the reform proposals cannot be assessed at present.

Key Areas of Concern

The ABA's substantive input to the inquiry is attached at **Appendix One: Issues of Concern and Potential Remedies**. We have identified those elements within the Bill that give rise to one or more of the following concerns:

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- the proposed provision contains an apparent drafting oversight that gives rise to an unintended consequence;
- the proposed provision is unnecessarily prescriptive and falls short of the policy goal of implementing a principles-based and risk-based framework;
- the proposed provision changes an existing obligation in a manner that appears to require substantial investment and customer disruption without achieving a meaningful uplift in AML/CTF outcomes.

We have sought to suggest potential remedies wherever possible and provided commentary where relevant on implications for alignment with FATF obligations. Our ambition is, wherever possible, to provide a clear rationale for our concern and propose a straightforward pathway by which it can be addressed.

There are three key aspects of the Bill, where the ABA has identified significant issues of concern:

- Changes to Initial and Ongoing Due Diligence
- Changes concerning the Provision of Designated Services in Another Country
- The new approach to Obligations Relating to Transfers of Value

Changes to Initial and Ongoing Due Diligence

The ABA is supportive of the policy intent behind the proposed changes to initial and ongoing customer due diligence. However, our assessment of the provisions as currently drafted is that they are likely to require significant change in existing customer-facing processes that will substantially disrupt customer experiences including account opening and ongoing operation. These changes are estimated to require substantial systems investments at significant cost yet are unlikely to make any meaningful impact on AML/CTF outcomes. Notably, the proposed change in the timing of various elements of customer data collection and due diligence measures (see Item A3) during the customer onboarding process would require a fundamental redesign of IT systems at great cost and no identifiable benefit.

Recommendation:

The ABA has provided suggested amendments to the Bill that we believe better achieve the intended policy outcomes without the need for unnecessary expense.

Changes concerning the Provision of Designated Services in Another Country

The proposed changes to obligations concerning the provision of designated services in another country seek to give effect to FATF Recommendation 18 requiring reporting entities to exercise an appropriate degree of oversight of any subsidiaries or other operations providing designated services in another country. The ABA is supportive of the policy intent behind these proposed changes.

However, the ABA believes that the proposed changes require an unnecessarily onerous due diligence obligation that exceed the FATF obligation. It is likely to lead to highly inconsistent application across reporting entities and will place Australian entities seeking to operate overseas at

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a competitive disadvantage. As formulated, these provisions require an essentially continuous process of subjective analysis of the fine detail of other countries' AML/CTF regulations and comparison with Australian regulations.

This goes well beyond the policy intent of allowing an Australian entity operating offshore to rely upon compliance with the AML/CTF regulations of that jurisdiction unless the requirements of the host country are less strict than those in Australia. It is the view of the ABA, that this "less strict" test should be capable of straightforward and objective determination.

Recommendation:

The ABA recommends that cl236A(1) be amended so that the defence will be available where local laws meet FATF requirements. Detailed consultation with industry stakeholders can identify a straightforward and objective mechanism – potentially implemented through the AML/CTF Rules – by which this determination can be made.

Obligations Relating to Transfers of Value

Schedule 8 of the proposed amendments introduce a substantial reworking of the obligations surrounding transfers of value. These changes are intended to give effect to the "travel rule" in FATF Recommendation 16. The ABA is supportive of the policy intent behind these changes as they will support international interoperability and transparency of payments processes and information but notes that the required changes to payments infrastructure are substantial and will require very large investments by all participants which come on top of changes required to comply with ISO20022 requirements. It is essential that any required changes are unambiguous, well understood and aligned with relevant international standards **prior to being enacted into law.**

The proposed hierarchy test is complex and is not principles-based. It does not align with the definitions in the FATF Recommendation or other major jurisdictions. This is likely to put Australian businesses at a competitive disadvantage due to the additional regulatory burden and will add substantially to implementation costs as international-standard software will require expensive and complex customisation for Australia.

In the time available for this consultation, the ABA has identified many areas of uncertainty in the intended operation of s63A. **The level of uncertainty is so high that it is not presently apparent how the provision could be translated into business requirements for the IT systems that are needed to implement them.**

Recommendation:

Regrettably, the ABA has been unable to identify proposed remedies to our concerns in the time available for this submission. It is our view that the uncertainty surrounding these provisions is so significant that they should not proceed at this time and should be excised from the amendment Bill.

The ABA proposes that the Bill should set out high-level principles only with any necessary prescriptive detail included in the revised AML/CTF Rules.

Extensive industry consultation is required to develop a clear technical model for implementation of FATF travel rule requirements based upon a deep understanding of the capabilities and limitations

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of payments systems, alignment with relevant international standards such as ISO2022 and alignment with Australia's national payments strategy. It should be informed by the outcome of the updated FATF recommendation and interpretative note. This technical model can then inform the appropriate drafting of the legal obligations.

Request for Extended Implementation and Assisted Compliance Periods

The ABA notes that the proposed reforms are significant and will require substantial investments in system and process changes to implement effectively. This means that, in addition to providing certainty as to requirements a reasonable implementation timeline and assisted compliance period will be required in order to ensure an orderly roll out of the changes and minimal disruption to customer experiences. The implementation period should be developed collaboratively with industry and be grounded in a clear understanding of payment and other systems capabilities and alignment with the national payments strategy.

For clarity, banks estimate that safe and effective implementation of the substantial changes in IT systems and processes will necessarily be a multi-year process.

Conclusion

The ABA thanks the Committee for the opportunity to contribute our perspective on the proposed reforms to the AML/CTF Act. The ABA is supportive of the policy intent of the reforms and acknowledges that in many areas the reforms will achieve their goal of simplification and extension of the AML/CTF system to the benefit of all stakeholders.

We have identified three key areas where further work can achieve an outcome that better aligns with the intended policy goals of the reforms and look forward to the opportunity to work with the Attorney-General's Department on the appropriate and necessary fine-tuning of those aspects of the reforms.

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About the ABA

The Australian Banking Association advocates for a strong, competitive and innovative banking industry that delivers excellent and equitable outcomes for customers. We promote and encourage policies that improve banking services for all Australians, through advocacy, research, policy expertise and thought leadership.

Appendix One: AML/CTF Amendment Bill – Issues of Concern and Potential Remedies

A: INITIAL AND ONGOING CUSTOMER DUE DILIGENCE

Ref	Item	Issue	Impact	Suggested Amendment	FATF Considerations
A1	Cl26F(12)	Cl26F(12) imposes a legal burden on the reporting entity seeking to rely upon the exception in 26F(11).	This is an unreasonably high standard that is inappropriate to the nature of the exception.	Amend the provision to apply an evidentiary burden rather than a legal burden on the reporting entity.	No FATF implications
A2	Cl 28(1) and (6)	Section 32 of the AML/CTF Act currently requires an identification procedure to be carried out with respect to a customer prior to be provision of a designated service. Cl 28 proposes a **more onerous test** requiring the reporting entity to *establish* certain matters with respect to the customer going to identity and risk *on reasonable grounds*. Cl 28 requires more customer information to be obtained and reviewed prior to the provision of a designated service is currently required. **A test of *reasonable steps* is more appropriate.**	Implementation of this provision would lead to significant disruption to customers including potentially lengthy delays in opening a new account and unnecessary interruption of payment flows. It would also limit the ability to meet expectations regarding faster payments processing The changed legal test would require a significant and costly change to existing and well-established customer onboarding processes and systems without any beneficial impact on AML/CTF outcomes.	Amend cl 28(1) by replacing '*established on reasonable grounds*' with '*taken reasonable steps to establish*'. Amend cl 28(6) by replacing '*establishing reasonable grounds*' with '*taking reasonable steps to establish*'. Note that proposed cl 28(3)(a) proceeds on the basis that *reasonable grounds* in cl 28(1) can be established by *taking reasonable steps*. A test of *reasonable steps* is used in other provisions in the Bill including cl 26H, 65, 66 and 46.	Recommendation 10 of the FATF Standards requires Financial Institutions (**FIs**) to ***undertake*** customer due diligence ***measures*** **when** establishing business relations or carrying out certain occasional transactions. The Standards do not mandate that a customer's identity and risk profile be established on reasonable grounds before the provision of a regulated service.
A3	Cl 28(2)(e)	Under current practice across the banking sector: • screening for PEPs and sanctions; and • the collection and verification of additional KYC information in relation to PEPs (such as source of wealth/funds)	Implementation of this provision would require a **fundamental redesign of IT systems and associated customer onboarding processes** resulting in significant business disruption and very poor customer outcomes including substantial delays before the provision of services.	Delete cl 28(2)(e) and permit PEP and sanctions screening to be completed after the commencement of a designated service, on a risk-basis. The text of Part 4.13.1 of the current AML/CTF Rules could provide a model.	The proposed amendment is consistent with the FATF Standards. Recommendation 1 provides that a risk-based approach is permitted is an essential foundation to efficient allocation of resources across the AML/CTF regime and the

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		is not completed until **after** the reporting entity has commenced to provide the designated service, as permitted under Part 4.13.1 of the current AML/CTF Rules. Usually, this process is completed after an account has been opened. Cl 28 requires that these processes be completed **before** the provision of the designated service. **A risk-based approach that recognises that customer onboarding is a process rather than a single moment in time is more appropriate.**	The proposed changes are unnecessarily prescriptive and do not align with the policy intent to establish a framework for appropriate risk-based processes. The changed process would result in significant business and customer disruption without any impact on AML/CTF outcomes.	The requirements on governing bodies (cl 26H) and senior managers (cl 26P) will ensure that reporting entities are accountable for effectively managing ML/TF risks posed by PEPs. It is acknowledged that paragraph 222 of the Explanatory Memorandum contemplates that the AML/CTF Rules may include provision allowing verification of whether a customer is a PEP or designated for targeted financial sanctions on 'day 2'. However, given that the revised Rules have not yet been released for comment and that the policy intent appears clear, the simpler and more certain approach would be to amend the Bill itself to remove any uncertainty.	implementation of risk-based measures throughout the FATF Recommendations. In addition to performing ordinary customer due diligence, Recommendation 12 requires FIs to have **appropriate risk-management systems** to determine whether a customer or the beneficial owner is a politically exposed person (**PEP**). In relation to a foreign PEP, FIs are required to obtain senior management approval before establishing (or continuing, for existing customers) such business relationships. Recommendations 10 and 12 envisage that initial customer verification can be completed **as soon as reasonably practicable** following the establishment of the relationship, where the money laundering and terrorist financing risks are effectively managed and where this is essential not to interrupt the normal conduct of business. This includes the requirement to obtain senior management approval with respect to foreign PEPs.
A4	Cl 28(3)	Proposed Cl 28(3) prescribes a detailed set of mandatory and inflexible KYC information requirements and due diligence requirements. Cl28(3)(b) requires that the ML/TF assessment is	As currently drafted, Cl 28(3) is unnecessarily prescriptive and does not align with the policy intent to establish a framework for appropriate risk-based processes.	Delete the mandatory requirements in cl 28(3). Any mandatory requirements that must be met to discharge the obligation under cl 28(1) could be	Proposed cl 28(2) satisfies the FATF Standards without the need for the mandatory prescription in cl 28(3) – including the obligation to understand and, as appropriate, obtain information on the purpose

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		completed before the provision of designated services. **Under a risk-based approach, a reporting entity should have flexibility to determine the scope and timing of any KYC information – beyond verification of identity - to be collected and verified prior to the provision of a designated service.**	It will unnecessarily constrain business practices and limit the opportunity for innovation in the design of appealing customer experiences and is likely to be inflexible in the face of changing business models and technologies.	prescribed by Rules under cl 28(6) after detailed consultation with affected sectors. The requirements on governing bodies (cl 26H) and senior managers (cl 26P) will ensure that reporting entities are accountable for these risk-based decisions and for effectively managing ML/TF risks.	and intended nature of the business relationship. Recommendation 10 of the FATF Standards requires FIs to undertake customer due diligence measures *when* establishing business relations or carrying out certain occasional transactions. Financial institutions should be required to verify the identity of the customer and beneficial owner ***before or during*** the course of establishing a business relationship or conducting transactions for occasional customers. Countries may permit financial institutions to **complete the verification as soon as reasonably practicable following the establishment of the relationship**, where the money laundering and terrorist financing risks are effectively managed and where this is essential not to interrupt the normal conduct of business. Recommendation 10 anticipates that, as part of ongoing due diligence, the customer's transactions will be monitored against the FI's knowledge of the customer, their business and risk profile, including, where necessary, the source of funds. Recommendation 10 does not mandate the collection or review of

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					information going to the customer's risk profile prior to the provision of a regulation service. Recommendation 1 provides that a risk-based approach is permitted is an essential foundation to efficient allocation of resources across the AML/CTF regime and the implementation of risk-based measures throughout the FATF Recommendations.
A5	Cl 28(9) and (10)	Reporting entities should not be exposed to ongoing civil penalties once non-compliance with cl 28(1) has been rectified.		Amend cl 28(9) and (10) to disapply ongoing civil penalty contraventions once the matters in cl 28(2) have been established by the reporting entity on reasonable grounds.	No FATF implications
A6	Cl 29(1)(b)	Cl 29 permits compliance with cl 28 after commencing to provide a designated service in certain circumstances where the reporting entity determines on reasonable grounds the ML/TF risk is low and each of the prescribed conditions in cl 29 have been met. One of the conditions, as set out in cl 29(1)(b), is that the reporting entity determines on reasonable grounds that commencing to provide the designated service to *the* customer before cl 28(1) is complied with *in relation to the customer* is *essential* to *avoid* interrupting the *ordinary course of business*.	As currently drafted, Cl 29(1)(b) sets an extremely high and uncertain standard that is so unlikely to be met in practice that it effectively makes the provision inoperable.	Delete cl 29(1)(b) Cl 29(1)(c) to (e) provide adequate checks and balance, along with the rule making power in cl 29(1)(a) and (f). The requirements on governing bodies (cl 26H) and senior managers (cl 26P) will ensure that reporting entities are accountable for these risk-based decisions. To the extent necessary, any further conditions could be prescribed by Rules under cl 29(1)(a) or (f) after consultation with affected sectors.	Recommendation 10 permits financial institutions to complete the **verification** as soon **as reasonably practicable following** the establishment of the relationship, **where** the money laundering and terrorist financing risks are effectively managed and where this is essential not to interrupt the normal conduct of business. It is acknowledged that proposed cl 29(1)(b) picks up this language. However, Recommendation 10 does not require regulated entities to objectively determine, customer-by-customer, that verification after the provision of a regulated service

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		This test is unnecessarily burdensome because: • it requires the reporting entity to make a determination with respect to each customer; • the threshold of *essential* to *avoid* is high. • *Ordinary course of business* is not defined and creates uncertainty as to when a risk-based approach will be considered permissible by the regulator. **A principles-based and risk-based approach to initial customer due diligence should be permitted.**			is essential to avoid disrupting the ordinary course of business. The FATF recommendation permits risk-based approaches to initial customer due diligence before the provision of a regulated service.
A7	Cl 29(2)(a)	Reporting entities should not be exposed to ongoing civil penalties for non-compliance with conditions for the exception in cl 29 once non-compliance has been remedied.		Amend cl 29(2) to disapply ongoing civil penalty contraventions in cl 29(3) if non-compliance with the AML/CTF Policies in cl 29(1)(c) have been remedied. Amend cl 29(2) to insert an expanded reference to customer as following "*to a customer, or to a particular cohort of customers,".* Amend cl29(2)(a) to "*continue to provide the designated service to the customer in respect of whom there is a compliance issue;*	No FATF implications

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				Amend cl29(2)(b) to " *commence to provide any other designated service to the customer until the compliance issue is remedied."*	
A8	Cl 30(7)	A contravention should arise on providing a designated service to the customer in respect of whom there has been a due diligence failure only.		Amend clause 30(7) to provide for a contravention in respect of each designated service that the reporting entity provides to **the** customer (not **a** customer).	No FATF implications
A9	Cl 30(8)	A contravention should arise on providing a designated service to the customer in respect of whom there has been a due diligence failure only.		Amend cl 30(8) along the following lines – A reporting entity that contravenes subsection (1) commits a separate contravention of that subsection on each day that the reporting entity provides a designated services to the customer at or through a permanent establishment of the reporting entity in a foreign country.	No FATF implications
A10	Cl 31(a)	Cl 31(a) permits simplified customer due diligence where the ML/TF risk of the customer **is** low. Simplified due diligence should be permitted where the reporting entity has a **reasonable basis** to be satisfied that ML/TF risk is low.		Amend cl 31(a) so it applies where the reporting entity has a reasonable basis to be satisfied that the ML/TF risk of the customer is low.	No FATF implications
A11	Cl 32(a) and (c)	Clause 32 requires a reporting entity to apply enhanced customer due diligence measures appropriate to the ML/TF risk of the customer where the ML/TF risk of the customer **is** high.	The proposal appears to broaden the existing obligation without any specific policy rationale as to why it is required.	Amend cl 32(a) and (c) so they apply where the reporting entity is, or should reasonably have been, aware that the ML/TF risk of the customer or customer type is high.	No FATF implications

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		Enhanced due diligence should be required where the reporting entity is, or should reasonably have been, aware that ML/TF risk is high.			
A12	Cl 32	Cl 32 imposes a list of ECDD measures that must be conducted in all cases prior to the provision of a designated service. **The Bill should permit a risk-based approach as to the timing for ECDD measures to be conducted on high ML/TF risk customers – whether that be before providing a designated, on day 2 or anytime thereafter.**	Implementation of this provision would require a significant and costly change to existing and well-established customer onboarding processes and systems and lead to poorer customer experiences including unnecessary interruption of payment flows and customer transactions. The proposed changes are unnecessarily prescriptive and do not align with the policy intent to establish a framework for appropriate risk-based processes.	Amend cl 32 as follows: *'In complying with the obligation imposed on a reporting entity under subsection ~~28(1) or~~ 30(1) in relation to a customer, the reporting entity must apply enhanced customer due diligence measures ….'.* (i.e. delete reference to 28(1)) The requirements on governing bodies (cl 26H) and senior managers (cl 26P) will ensure that reporting entities are accountable for these risk-based decisions.	Recommendation 10 requires FIs to apply each of the customer due diligence measures specified in (a) to (d), but should determine the extent of such measures using a risk-based approach in accordance with the Interpretive Notes. The interpretative notes to Recommendation 10 indicate there are circumstances where the risk of money laundering or terrorist financing is higher, and enhanced CDD measures have to be taken. Recommendation 10 is not prescriptive as to when ECDD must be undertaken and does not require all high ML/TF risk customers to be detected prior to the provision of a designated service and subject to ECDD prior to the provision of a designated service. Recommendation 1 provides that a risk-based approach is permitted is an essential foundation to efficient allocation of resources across the AML/CTF regime and the implementation of risk-based measures throughout the FATF Recommendations.

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A13	Cl 36(4)	A reporting entity should not be obliged to cease providing designated services whilst the cl 28(1) matters are being established. The trigger in cl 36(4)(b) is activated where a significant change in the nature and purpose of the business relationship with the customer results in the ML/TF risk of the customer being medium or high. The medium risk threshold could be readily reached in a range of circumstances. The trigger in cl 36(4)(a) is activated where an SMR obligation arises. Financial institutions will find it difficult to put a stop on an account (and explain its position to the customer) without tipping off.	This will cause unnecessary disruption to customers. As currently drafted, cl 36(4) would require a financial institution to put a hard and immediate stop on all ongoing transactions. For example, the financial institution could not: • accept a deposit into an account by way of salary payment; • permit withdrawals or payments from an account; or • accept loan repayments on a loan account thereby placing the customer in default. Should this requirement impact a large institutional customer, the ability of that business to provide services to their customers could be significantly impacted with potential impacts across the wider economy.	Amend cl 36 so that the reporting entity is required to establish the cl 28(2) matters as soon as practicable after the cl 36(4) circumstances arise.	This proposed amendment is not inconsistent with the FATF Recommendations. Recommendation 1 provides that a risk-based approach is permitted is an essential foundation to efficient allocation of resources across the AML/CTF regime and the implementation of risk-based measures throughout the FATF Recommendations.

B: AML/CTF PROGRAMS

Ref	Item	Issue	Impact	Suggested Amendment	FATF Considerations
B1	Overall	The Bill does not define the words "policies"or "procedures" for the purposes of the term AML/CTF program.	In the absence of definitions, these words could have unconfined breadth. The possibility of low level operational procedures, systems and controls (see specifically B6 below) being caught by the concept of AML/CTF program risks reporting entities unintentionally accruing innumerable technical breaches in connection with inconsequential failures. This, in turn, could lead to an ineffective and unnecessarily burdensome focus on technical compliance rather than the policy intent of a principles-based framework. The potentially excessive breadth of AML/CTF policies would impact the conduct of independent evaluations of the reporting entities' AML/CTF Programs again leading to an inappropriate focus on technical compliance rather than an effective principles- and risk-based Program.	**EITHER** The Bill could be amended to give reporting entities certainty as to the breadth of those terms when developing AML/CTF Programs by providing definitions of the words "policies" and "procedures" so the breadth and scope of the terms is clear and appropriately constrained **OR** Confer a power on the AUSTRAC CEO to specify documents or classes of documents that are or are not AML/CTF policies or procedures. Other than the existing exemptions and modifications power in section 248 of the Act, the AUSTRAC CEO would have no such power under the current Bill. A 'reasonable steps' qualifier should be added to subparagraph 26G(1)–(2), allowing a reporting entity to fulfil its obligation where it takes reasonable steps to comply with the provisions of its AML/CTF program. Adding a qualifier acknowledges that inadvertent policy breaches may occur, while still requiring reporting entities to take appropriate and proportionate measures to ensure procedures are understood and properly	No FATF implications

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		implemented. Reasonable steps measures have been incorporated in other legislation governing Australian Financial Services Licensees. For example, section 912A(1)(ca) of the Corporations Act 2001 (Cth) requires that "a financial services licensee must take reasonable steps to ensure that its representatives comply with financial services laws …" For example, 26G could be amended to include reasonable steps. ***26G Reporting entities must comply with AML/CTF policies.*** *(1) A reporting entity must* ***take reasonable steps to*** *comply with the AML/CTF policies of the reporting entity.* *(2) If:* *(a) a reporting entity is a member of a reporting group; and* *(b) the reporting entity is not the lead entity of the reporting group;* *the reporting entity must* also ***take reasonable steps to*** *comply with the AML/CTF policies of the lead entity of the reporting group that apply to the reporting entity.* *Note: The lead entity of the reporting group must* ***take reasonable steps to*** *comply with its own AML/CTF policies under subsection (1).*

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B2	Cl 26E	A reporting entity should not be exposed to ongoing civil penalty contraventions once non-compliance has been rectified.		Amend clauses 26E(3) and (4) to disapply ongoing civil penalty contraventions once non-compliance has been rectified.	No FATF implications
B3	Cl 26F, 26G and 26H	It is not clear how civil penalty contraventions are calculated under these provisions.	Penalty provisions should be clear and proportionate to the ML/TF and not uneccessarily granular. A "reasonable steps" test is an appropriate control on the penalty provision. Reasonable steps measures have been incorporated in other legislation governing Australian Financial Services Licensees. For example, section 912A(1)(ca) of the Corporations Act 2001 (Cth) requires that "a financial services licensee must take reasonable steps to ensure that its representatives comply with financial services laws …" A test of *reasonable steps* is used in other provisions in the Bill including cl 26H, 65, 66 and 46.	Clarify the basis upon which civil penalty contraventions are to be calculated in clauses 26F, 26G, and 26H. Amend 26G as follows: *26G Reporting entities must comply with AML/CTF policies.* *(1) A reporting entity must take reasonable steps to comply with the AML/CTF policies of the reporting entity.* *(2) If:* *(a) a reporting entity is a member of a reporting group; and* *(b) the reporting entity is not the lead entity of the reporting group; the reporting entity must also take reasonable steps to comply with the AML/CTF policies of the lead entity of the reporting group that apply to the reporting entity.* *Note: The lead entity of the reporting group must take reasonable steps to comply with its own AML/CTF policies under subsection (1).*	No FATF implications

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B4	Cl 26F(1)(a)	Cl 26F(1)(a) requires that a reporting entity must develop and maintain policies, procedures, systems and controls that ***appropriately*** manage and mitigate the risks of money-laundering, financing of terrorism and proliferation financing …. The term "appropriately" is undefined and there is no bright line as to when the threshold will be met.	An underfined subjective test will lead to uncertainty and inconsistent application.	Delete "appropriately" from cl 26F(1)(a) and replace with "are designed to".	No FATF implications
B5	Cl 26F(1)(b) and cl 26F(6)	Cl 26F(1)(b) requires that a reporting entity must develop and maintain policies, procedures, systems and controls that ***ensure*** the reporting entity complies with theobligations imposed by the Act … Cl26F(6) also has the concept of "ensuring".	This absolute test sets an unreasonably high bar.	Amend cl26F(1)(b) to replace "ensure" with "that are designed to ensure". Amend cl26F(6) to delete "ensuring".	No FATF implications
B6	Cl 26P	The scope of the obligation of senior managers under cl 26P to approve 'procedures, systems and controls' as part of the definition of 'AML/CTF policies' needs to be clarified. AML/CTF Programs are supported by a hierarchy of operational procedures, systems and controls that are regularly updated. It is neither appropriate nor practical to require senior managers to approve these types of documents.	An obligation on senior managers to approve every detail of changes to low level operational procedures, systems and controls is overly burdensome and likely to be unworkable in practice.	Amend cl 26P to the effect that cl 26P(1) does not require senior management approval of procedures, systems and controls. Other provisions in the Bill, including cl 26L and 26H will ensure appropriate oversight over AML/CTF Policies, as a whole, including the effectiveness of procedures	This proposed amendment is not inconsistent with the FATF Recommendations. Recommendation 1 requires FIs to identify, assess and take effective action to mitigate their money laundering, terrorist financing and proliferation financing risks. It provides that a risk-based approach is permitted as an essential foundation to efficient allocation of resources across the AML/CTF regime and the implementation of risk-based

					measures throughout the FATF Recommendations. The interpretative note to Recommendation 1 provides that FIs are required to have policies, controls and procedures, which should be approved by senior management, to enable them to manage and mitigate effectively the risks that have been identified. It is acknowledged that the interpretative notes refer to 'procedures' in the context of senior management approval. However, a contextual reading permits a risk-based approach.

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C: KEEP OPEN NOTICES

Ref	Item	Issue	Impact	Suggested Amendment	FATF Considerations
C1	Cl 39A(2)	Cl 39A provides certain exemptions from AML/CTF obligations where a keep open notice has been issued and is in force. The exemptions under cl 39A of the Bill mirror those in r 75.3 of Chapter 75 of the current Rules. However, the exemptions in cl 39A are only available to the extent the reporting entity forms a view that doing those things would or could reasonably be expected to alert the customer to the existence of a criminal investigation. It is proposed that the Bill maintain the current coverage as per Chapter 75	Requiring the reporting entity to make subjective assessments as to whether or not the conduct of certain activities would or could reasonably be expected to alert the customer to the existence of a criminal investigation is an unreasonably burdensome obligation. The reporting entity will be unaware of the context of the notice and would be required to conduct desktop due diligence resulting in increased administrative efforts for all parties including AUSTRAC.	Amend 39A(2) as follows: Despite any other provision of this Part or Part 1A, section 28, 30 or 26G does not apply to the reporting entity in respect of the provision of a designated service to the customer ~~to the extent that the reporting entity reasonably believes that compliance with that section would or could reasonably be expected to alert the customer to the existence of a criminal investigation.~~	No FATF implications
C2	Cl 39B(2)(a) and (b)	Certain agencies may issue "keep open" notices to a reporting entity under cl 39B where the provision of a designated service by the reporting entity to a customer would assist in the investigation by the agency of a serious offence. Under the current regime, keep open notices and exemptions are available under Chapter 75 of the Rules. Under Ch 75, a serious offence is relevantly defined as an offence	The lower threshold for a serious offence and reduced coverage in exemptions (see above) creates higher risks for banks in retaining more customers subject to Keep Open Notices including the effective mitigation and management of risk.	Cl 39B(2)(a) – change definition of **serious offence** to *an offence against a law of the Commonwealth, or a law of a State or Territory, that is punishable by imprisonment* ***for 3 years or more.***	No FATF implications

		against a law of the Commonwealth, or a law of a State or Territory, punishable **on indictment** by imprisonment for 2 or more years. **The Bill proposes a lower threshold for a "serious offence".** Under the Bill a serious offence is relevantly defined as an offence against a law of the Commonwealth, or a law of a State or Territory, that is punishable by imprisonment for 2 years or more.			

Appendix One: AML/CTF Amendment Bill – Issues of Concern and Potential Remedies

D: TIPPING OFF

Ref	Item	Issue	Impact	Suggested Amendment	FATF Considerations
D1	Cl 123	Reporting entities should be given clarity that disclosure can occur if required or permitted by a law of the Commonwealth, State or Territory.	Without the exemption in current 123(9), there will likely be instances of conflict of laws. For example, the Scams Prevention Framework as proposed by the *Treasury Laws Amendment Bill 2024: Scams Prevention Framework Bill* which proposes sharing of certain information with scams victims.	Reinstate the exception in current s123(9) relating to disclosure in compliance with a requirement under a law of the Commonwealth, State or Territory. Extend the wording to disclosures made or permitted under a law of the Commonwealth, State or Territory.	Recommendation 21 of the FATF Standards deals with tipping-off and prescribes no exceptions to the prohibition. Australia was, however, rated as 'Compliant' with this Recommendation in our last Mutual Evaluation Report even with this permissive approach to sharing Suspicious Matter Reports.
D2	Cl 123	The proposed exception in cl123(5) applies to disclosures to another reporting entity but does not extend to disclosures between persons who are all members of a reporting group but not necessarily reporting entities. Disclosures should be permitted between all members of a reporting group including for the purposes of compliance with cl 26F(5), provided there has been compliance with cl26F(6).	As currently drafted, the exception in cl123(5) inappropriately limits the ability to share information within a business group or to members of a global financial group. This could create unnecessary and artificial barriers to the effectiveness of AML, anti-fraud and anti-scam processes.	Extend the exception in cl 123(5) to all members of a business group and to members of a global financial group The business group AML/CTF program can impose appropriate controls on any disclosures, including establishing differing risk based controls depending upon the nature of the entity to whom the disclosure is bieing made and the relationship with the disclosing entity. To the extent necessary, any further conditions could be prescribed by Rules after detailed consultation with affected sectors.	FATF Recommendation 18 - Internal controls and foreign branches and subsidiaries – states that financial institutions should be required to implement programmes against money laundering and terrorist financing. Financial groups should be required to **implement group-wide programmes** against money laundering and terrorist financing, including policies and procedures **for sharing information within the group for AML/CFT purposes.**
D3	Cl123	Section 123(1)(a) of the *AML/CTF Amendment Bill 2024* introduces individual responsibility for the tipping off offence.	Introducing individual responsibility is appropriate where the individual has acted intentionally. However, a general individual responsibility that extends to	Limit individual responsibility to disclosures with the intent to prejudice an investigation.	No FATF implications

Appendix One: AML/CTF Amendment Bill – Issues of Concern and Potential Remedies

			relatively low level staff may have the unintended consequence of discouraging information sharing and hinder the identification of ML/TF risks.		
D4	Cl123	The commencement date for Schedule 5 Part 1 is 31 March 2026.	There is no clear rationale as to why the commencement date for this provision is not aligned with Royal Assent or another earlier date. The current flaws in the tipping off offense are such that an earlier commencement date for the reformed provision is worthwhile for all stakeholders. It will also remove/minimise the need for reporting entities to reapply for current exemptions in the interval between Royal Assent and the commencement date of these provisions.	Align the commencement date for these provisions with Royal Assent or some other date as soon as practicable after Royal Assent.	No FATF implications.
D5	Removal of current s123 exemptions		The principles-based approach to the definition of the tipping off offence is expected to be sufficient to permit disclosures for the purposes of obtaining legal advice, audit and review of the AML/CTF program. However, the repeal of the existing explicit exemptions may create some uncertainty.	Repeal of existing s123 exemptions should proceed in line with the principles-based approach. ABA recommends that specific Rules or Guidance be developed to provide certainty as to the permissibility of disclosures for the purposes of obtaining legal advice, audit and and review of the AML/CTF program.	No FATF implications

E: OBLIGATIONS RELATING TO TRANSFERS OF VALUE

Ref	Item	Issue	Impact	Suggested Amendment	FATF Considerations
E1	Part 5	The proposed Bill introduces very significant changes to the current framework for obligations concerning payment instructions and introduction of the concept of transfers of value. These changes, in turn, have substantial implications for electronic funds transfer obligations, designated remittance arrangements and international funds transfer instruction (IFTI) reporting processes. The current drafting of the Bill cannot be understood or assessed in the absence of the proposed Rules. Many provisions raise issues of uncertainty of intended interpretation and **it is not presently apparent how the provisions of the Bill could be translated into business process requirements for the IT systems that are needed to implement them.** Among the issues of concern: • it is unclear how an ordering or beneficiary institution will determine where it sits in the s63A hierarchy at any given point; • it is unclear where a value transfer chain starts and ends;	Payments system are the essential backbone of almost all economic activity in the country. Payments infrastructure represents a significant and complex investment by multiple parties across the banking industry and wider economy. It is essential that any changes in the architecture of the payments infrastructure are fully thought through and fully understood by all participants. Changes that are not fully thought through (including implications for the overall effectiveness of the payments system rather than AML/CTF considerations only) or that are inconsistently or incorrectly understood run the very substantial risk of enormous disruption, rework and wasted investment. **Given the current level of uncertainty as to the implications of the proposed changes to these systems and the inability to assess the operational implications for payments systems, these changes should not proceed at this time.**	The ABA is unable to identify proposed amendments to the Bill to cure the current uncertainty as to the implications of these provisions. **These changes should be deferred at this time.** The preferred approach would be for the Bill to set out high level principles only wih any prescriptive criteria including definitions included in the AML/CTF Rules. The process of developing the Rules should be grounded in a deep understanding of the capabilities and limitations of Australia's payments systems and our overall national payments system strategy. The desired AML/CTF process outcomes should be assessed against those capabilities and a full understanding of the costs of implementation and implications for the overall operation of the payments system developed. Any appropriate trade offs should be considered and agreed as part of the overall national payments strategy. The output of this process could then inform the drafting instructions	The proposed stakeholder engagement process must consider ***how to effectively and efficiently*** meet the FATF Travel Rule obligations.

- it is unclear what the term "first" as used in s63A(1) and (5) is relative to (first in time? first in a chain? first to accept an instruction and from who?;
- what is meant by the term 'transfer message' in the context that it contains information relating to the content of the payer's instruction for the transfer of value?

Some of the unresolved implications of this uncertainty include:

Priority Proposal
REs may have difficulty determining where they sit in the s63A hierarchy. Transfer messages may be loaded with information showing the OI and BI (e.g., a remitter who uses a bank account to facilitate a remittance - often through some agreement with the bank). However, this is not always the case and ambiguities may arise as to the role of each party. **This uncertainty makes it possible that the same set of circumstances could lead to two value transfer chains in some circumstances and one chain in others.**

Passing on information
The scope of the obligation on Beneficiaries and Intermediaries to 'take reasonable steps' to monitor for the relevant AML/CTF obligations.

This is a significant and complex task but essential to ensure the optimal economy wide outcome.

Once clarity of requirements is achieved, an extended implementation and compliance timeline will nevertheless be required to ensure the secure and effective implementation of these changes. This timeline should be developed in close consultation with industry and based on an in depth understanding of the technical systems changes required.

	receipt of required information should be clarified. The EM's suggestion that 'reasonable steps' may include 'sampling of transfer messages' may assist. But further clarification of the obligation is required (potentially in the Rules or Guidance). Further, the concept of 'taking such other action' as is 'determined' when information is not provided should be clarified (again in the Rules or Guidance). *Intermediary Institution* - Smaller entities may rely on intermediaries to discharge their IVTS reporting obligations. There are also circumstances, to be included the Rules, where this is a compulsory requirement. However, the limited details make it difficult to assess how this may be conducted in practice and the impact it will have on both small and larger reporting entities. *Broad Scope* - the broader scope of IVTS could capture products which were not previously included the IFTI reporting regime (due to removal of the control requirement). This could mean that trade-based transactions, and credit card transaction could be captured.	

F: DESIGNATED SERVICES PROVIDED IN ANOTHER COUNTRY

Ref	Item	Issue	Impact	Suggested Amendment	FATF Considerations
F1	Cl 236A	There is a significant expansion of the application of the Act and civil penalties with respect to designated services in a foreign country that meet the geographical link in s6(6). See for example, Part 1A: • cl 26C (risk assessments); and, • cl 26F and 26G (developing, maintaining and complying with AML/CTF policies). and Part 2: • cl 28(1), (2) and (3) (initial customer due diligence) • cl 30(1) (ongoing due diligence); and • Cl 31 (simplified due diligence) and cl 32 (enhanced customer due diligence). The defence to these provisions in s236A applies where, amongst other conditions, *a law of the foreign country that applies in the place where the permanent establishment is located* ***prevents*** *the reporting entity from complying with that civil penalty provision*. Notably, the reporting entity will be required to provide **written notice** to the AUSTRAC CEO of **those**	This proposed provision proposes an extremely onerous due diligence obligation on Australian banks seeking to provide services in another country. The provision requires a detailed analysis of the AML/CTF regulations in each offshore jurisdiction (without any limitation as to the level of materiality) and a comparison with any equivalent Australian requirements. An assessment must then be made whether compliance with the offshore requirement **prevents** compliance with Australian requirements (again without any limitation as to the level of materiality) and written notice must be provided to the AUSTRAC CEO (at an undefined degree of specificity) prior to the provision of service. As detailed AML/CTF obligations are constantly changing, this assessment must be regularly updated and any notices to the AUSTRAC CEO amended. In effect, this provision creates an obligation on Australian banks seeking to provide service offshore to maintain constant surveillance of changes in the minutiae of offshore AML/CTF requirements and	The provision should be redrafted to give effect to the stated policy principle that a reporting entity should be able to rely upon compliance with local laws achieve the same high level outcome as compliance with Australian laws. Ideally, AUSTRAC would provide a definitive assessment as to whether or not the AML/CTF regulations of another country meet FATF's requirements which can be relied upon by reporting entities. Alternatively, cl 236A(1)(b) should be amended so that the defence will be available where the laws of the foreign country give substantive effect to the relevant Australian requirements. A possible formulation could be to delete the current clauses 236A(1)(b) to (d) and substitute: (b) a law of the foreign country that applies in the place where the permanent establishment is located makes equivalent or similar provision with respect to the matter that is the subject of the civil penalty provision; and,	The requirements applying with respect to relevant designated services in a foreign country and the proposed defence in cl 236A go beyond FATF requirements. Recommendation 18 of the FATF Standards requires FIs to ensure that their foreign branches and majority-owned subsidiaries apply AML/CTF measures consistent with the home country requirements implementing the FATF Recommendations through the financial groups' programmes against money laundering and terrorist financing. The interpretative notes provide that in the case of their foreign operations, where the minimum AML/CTF **requirements of the host country are less strict than those of the home country**, financial institutions should be required to ensure that their branches and majority-owned subsidiaries in host countries implement the requirements of the home country, to the extent that host country laws and regulations **permit**. If the host country **does not permit** the proper implementation of the measures above, financial groups should apply **appropriate additional**

	facts which prevent compliance **before the conduct** takes place. **Reporting entities providing relevant designated services in foreign countries should not be required to comply with Australian requirements where local laws meet FATF requirements.** **A local law in a foreign country may prescribe a process that is FATF compliant, but that does not prevent the reporting entity from carrying out a duplicative or different process under Australian law.**	determine comparability with Australian provisions. This is an extraordinarily high due diligence obligation that goes well beyond the relevant FATF obligations. In order to circumvent this risk, Australian banks would likely implement duplicative processes intended to comply with both Australian and foreign country obligations resulting in a hopelessly fragmented customer experience and significant competitive disadvantage versus banks from other jurisdictions.	(c) the reporting entity has complied or taken reasonable steps to comply with that foreign law with respect to the conduct. The burden in 236A should be an evidentiary burden not a legal burden. In addition, amendments to the substantive provisions in the Bill as they apply to foreign countries may also be required to give effect to the FATF recommendations, but to not go beyond them.	**measures** to manage the money laundering and terrorist financing risks, and inform their home supervisors. If the additional measures are not sufficient, competent authorities in the home country should consider additional supervisory actions, including placing additional controls on the financial group, including, as appropriate, requesting the financial group to close down its operations in the host country.