



Committee Secretary
Senate Legal and Constitutional Affairs Legislation Committee
PO Box 6100
Parliament House
CANBERRA ACT 2600
AUSTRALIA

14 October 2024

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

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

Dear Committee Secretary,

The Commonwealth Bank of Australia (CBA) welcomes the opportunity to respond to the Senate Legal and Constitutional Affairs Legislation Committee Inquiry into the Anti-Money Laundering and Counter-Terrorism Financing Amendment Bill 2024 (**AML/CTF Bill**).

CBA supports modernising Australia's Anti-Money Laundering and Counter-Terrorism Financing (**AML/CTF**) regime and the Government's three key objectives of the Bill as set out in the AML/CTF Bill's Explanatory Memorandum¹:

- to extend the AML/CTF regime to certain higher-risk services provided by real estate professionals, professional service providers including lawyers, accountants and trust and company service providers, and dealers in precious stones and metals—also known as 'tranche two' entities;
- to improve the effectiveness of the AML/CTF regime by making it simpler and clearer for businesses to comply with their obligations; and
- to modernise the regime to reflect changing business structures, technologies and illicit financing methodologies.

CBA recognises that strengthening and modernising Australia's AML/CTF regime is important to protect the Australian community and the financial system from criminal exploitation and

¹ Anti-Money Laundering and Counter-Terrorism Financing Amendment Bill 2024 Explanatory Memorandum. The Parliament of the Commonwealth of Australia. 11 September 2024.

money laundering (ML), terrorism financing (TF) and proliferation financing (PF) risks and vulnerabilities.

CBA supports the reforms and encourages the Senate to pass the AML/CTF Bill. Due to the breadth of proposed amendments, CBA also recognises the importance of striking the right balance and recommends an extended implementation period for a sub-set of obligations to limit disruption to customers, transactions and payments and to also support implementing key system and process changes to core banking systems relating to customers and payments.

CBA also supports the submissions made by the Australian Banking Association (ABA) and Australian Financial Markets Association (AFMA) and their proposed amendments to the AML/CTF Bill. CBA considers that these amendments will improve the effectiveness of the AML/CTF regime and support a risk-based and outcomes focused regime. CBA recommends that the Senate supports the amendments proposed by the ABA and AFMA.

Summary of CBA's views

Commencement Dates

CBA recommends that the tipping off amendments commence 28 days after the AML/CTF Bill receives Royal Assent. Bringing forward the commencement date from 31 March 2026 for tipping off will remove the existing barriers and impacts on reporting entities. See the section below on Tipping off for further detail.

CBA recommends that phased implementation, with ongoing engagement with the Attorney-General's Department (the Department) and AUSTRAC, is necessary to establishing a solid foundation for compliance with a modernised AML/CTF regime. In particular, CBA considers that due to the complexity and expansion of the proposed amendments and reliance on the AML/CTF Rules (on which consultation is yet to occur) for Customer Due Diligence (CDD), obligations for transfers of value (travel rule), and foreign branches and subsidiaries, the time available to comply will be insufficient if the commencement date remains 31 March 2026. Further, due to the breadth of these amendments and resulting impacts to customers, transactions and payments, CBA is of the view that the process for implementing these changes can only commence following finalisation of the AML/CTF Rules such that an extended implementation period applies *following* finalisation of the AML/CTF Rules for CDD, the travel rule and foreign branches.

Customer Due Diligence

CBA considers that the proposed amendments to the CDD regime are overly prescriptive in parts and deviate from an outcomes focused approach. CBA supports a more flexible and principles-based approach to CDD. It is CBA's view that with greater flexibility, reporting entities will be better placed to collect information from and about customers to assess associated risks, which may change over time during the course of the business relationship.

At present, the process banks undertake to establish a 'business relationship' occurs over a period of several days for most customers, starting with identification and verification of a customer. However, due to the nature and scale of CBA operations, politically exposed person

(PEP) screening, sanctions screening, and a customer risk assessment is undertaken after this initial identification process for the majority of customers. If banks move to completing this screening and risk assessment process prior to the provision of a designated service, it may result in delays to the provision of services to customers such as opening an account and conducting transactions and require substantial changes to the origination and on-boarding processes.

In light of the above, CBA recommends amendments to the proposed CDD provisions to remove unnecessary prescription as set out in the ABA's submission, particularly around the timing of completion of initial CDD to provide reporting entities with greater flexibility to apply a risk-based approach with a focus on outcomes.

Transfers of value and international value transfer services

CBA recognises the importance of the proposed changes to the travel rule and international value transfer obligations and is supportive of the policy intent behind these changes. CBA also recognises that international value transfers play a critical role in the domestic and international economy and provide significant intelligence to AUSTRAC and other law enforcement agencies. However, the current drafting of these changes introduces complexity and uncertainty which will have wide ranging impacts.

To achieve the intended outcomes of simplification and clarity, CBA considers that further consultation between the Department and industry is required in relation to Schedule 8 of the AML/CTF Bill. Through such consultation, the Department and industry may achieve a more principles-based approach to these provisions, whilst achieving compliance with the relevant FATF Recommendations. CBA also supports the position of the ABA and AFMA in relation to these proposals.

Tipping Off

CBA broadly supports the changes to the tipping off prohibition in the AML/CTF Bill. However, CBA considers that the refinements outlined in the ABA and AFMA submissions are required to make the prohibition more effective.

Further, CBA recommends that the tipping off amendments commence 28 days after the AML/CTF Bill receives Royal Assent. The existing tipping off provisions continue to have significant impacts on reporting entities and represents an ongoing operational burden, particularly for complex institutions like banks. Further, the current regime inhibits private to private information under the AML/CTF Act and therefore restricts the volume of valuable intelligence, which could be available to reporting entities and law enforcement agencies. To some extent where information is permitted to be disclosed via the Australian Financial Crimes Exchange, there remain significant limitations to sharing information between private to private entities.

For example, in the current banking environment, sharing information to detect and prevent scams and fraud is crucial. At present, the tipping off prohibition creates challenges in sharing

information with other financial institutions relating to scam activity, such as mule account and mule activity, which could be impacting another financial institution's customer. While banks today do share scams intelligence with each other, and with other ecosystem partners, CBA considers that private to private information sharing for AML/CTF purposes will enhance the ability of banks to efficiently protect the community from nefarious actors.

Early implementation of the reformed tipping off prohibition would enable the timely sharing of such intelligence, which would enhance the ability of reporting entities and the industry at large to identify, manage and mitigate ML/TF risks. This would facilitate a more robust intelligence and risk environment which law enforcement could harness.

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We appreciate the time and effort of the Committee to review CBA's submission. Modernising and strengthening Australia's AML/CTF regime is paramount to addressing risks and threats faced by the Australian community and support this Bill to be passed.