



27 August 2021

Committee Secretary  
Senate Legal and Constitutional Affairs References Committee

Via email: [legcon.sen@aph.gov.au](mailto:legcon.sen@aph.gov.au)

## **Re: Adequacy and efficacy of Australia's anti-money laundering and counter-terrorism financing (AML/CTF) regime**

Chartered Accountants Australia and New Zealand (CA ANZ) welcomes the opportunity to provide feedback to the above noted inquiry. We support the Government's initiative to combat money laundering (ML) and terrorism financing (TF) and recognise the importance of Australia meeting its obligations as a member of the Financial Action Task Force (FATF).

As a professional accounting body, we are committed to acting in the public interest and contributing to a robust system to prevent criminals from using Australia for illegal activities. We hold our members to high ethical standards and, through our professional standards, we require members to undertake a degree of customer due diligence and meet record-keeping requirements.

Following consultation with our members, our feedback aims to assist in shaping the future design and implementation of expansion to designated non-financial businesses and professions (DNFBPs) to appropriately balance regulation with risk and strengthen our members' contribution to detecting and reporting potential ML or TF. We consider the following factors critical in achieving the greatest benefit from Tranche 2 and provide detailed feedback in Appendix A:

- A review of existing mechanisms for effectiveness before considering application to DNFBPs;
- Identify existing regulatory obligations and industry oversight that could be leveraged;
- Engage a broad range of stakeholders throughout the process, including consumers; and
- Undertake a cost / benefit analysis of the impact on businesses that would be captured in each proposed extension including, if applicable, the industry contribution levy.

Critically, the design must recognise DNFBPs are inherently different from financial institutions and will require specific amendments to the regime rather than simply being captured under the current regime.

Should you have any questions about the matters discussed above or wish to discuss them further, please contact

Yours sincerely

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**Group Executive**  
**Advocacy & Professional Standing**

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## Appendix A

The feedback detailed below is framed under the questions raised in the discussion paper where we consider we can add the most value.

### Key Questions:

#### **What are the potential risks, costs or other unintended consequence of poor design or implementation of additional AML/CTF regulation?**

- A key risk is designing legislation to address the technical deficiencies identified without due consideration of which existing requirements and obligations have led to the successful detection and prosecution of ML/TF. This would result in onerous red tape and may not improve the adequacy of Australia's AML/CTF regime;
  - We recommend an assessment be undertaken on which existing mechanisms have led to identification of ML/TF activity. Such an assessment should then be used as a basis to determine any future requirements and obligations for DNFBPs.
  - Future requirements and obligations should focus on stimulating the expanded regulated population to participate in the regime rather than meet onerous red tape requirements if the intended benefits from expanding the regime are to be realised.
- Duplication of existing compliance obligations on DNFBPs would exacerbate the compliance burden and red tape costs on our small practice members. The unintended consequence being higher costs to the consumer for accounting services, as small practices pass on their increased costs.
- Small practices who may involuntarily cease to offer designated services due to excessive compliance obligations, which in turn may inadvertently displace the risk of ML/TF to service providers that are not members of a professional body or outside the regime.
  - We recommend extensive consultation with the professional bodies that represent DNFBPs during each phase of the design, draft and implementation of any relevant future changes to the regime to ensure the changes leverage, not duplicate, existing obligations under legislation and professional standards, and the current regulatory oversight mechanisms to avoid duplication of effort and undue compliance costs.
- Poor design would result in requirements and obligations beyond the resources of a large proportion of our members in public practice, many of whom are Australian small businesses.
  - It is important to note that within each category of DNFBP, there will be a wide range of entity sizes and the relative effect on small entities versus larger entities must also be considered.
  - The aim should be to build compliance requirements within business as usual activities and ideally utilise established digital engagement channels with government.

#### **What has been the experience of other countries with the regulation of DNFBPs and how is this instructive to Australia?**

We have consulted our members in New Zealand who, from 2018, have been captured under Phase 2 of the AML/CFT legislation and we consider the following instructive for implementation in Australia:

- An appropriate and reasonable timeframe for implementation is required to:
  - ensure the new regulated populations can build AML/CTF processes into their daily operations; and
  - create an expectation amongst the general population of the need to verify their identity when interacting with businesses with AML/CTF obligations.

- When setting requirements and obligations, to be cognisant that of the 873,343 Australian business employing staff, 599,516 (68%) employ less than 5 people<sup>1</sup>. These small businesses have limited resources, both in funds and people, and will need guidelines and checklists from the Regulator to assist with compliance.
  - Members that already provide designated services have found it necessary to take on another employee to monitor adherence to the AML/CTF programme and undertake reporting to the Regulator.
  - Mid-tier firms have expended funds on legal advice to ensure their AML/CTF programme complies with the regime.
  - Guidelines and checklists developed or endorsed by the Regulator can remove a significant administrative burden from small DNFBPs, provide consistency in compliance and help to streamline surveillance and enforcement by the Regulator.
- Requirements and obligations should be scaled rather than a one size fits all approach. It is important to be cognisant that ML/TF risk is proportionate to the size of a business, the number of clients and the value of transactions, so policy responses should be pragmatic.
- Customer due diligence must take into account the geographical disbursement of businesses across Australia and recognise that the service provider may be geographically remote from the customer. Consideration should be given to whether a requirement for face-to-face meeting and paper documentation actually enhances authenticity above undertaking verification by digital means.
  - Consider harnessing existing and emerging digital identity tools which are supported by government bodies such as the Director ID and the Consumer Data Right infrastructure.
- Expansion to accountants and the services they offer will require recognition and protection of the trusted adviser status attributed to qualified, professional accountants.
  - For consistency, we direct the Committee to the definitions applied in the Consumer Data Right regime for trusted advisers with definitions being drawn from the existing legislation.
  - For example: qualified accountant – *Corporations Act 2001*; registered tax agent – *Tax Agent Services Act 2009*.

### **Is AUSTRAC appropriately resourced for implementing Tranche 2?**

- The design should seek to minimise additional operational costs for AUSTRAC by expanding existing systems rather than build new systems, which in turn would require new processes.
  - Our members are already subject to a raft of levies and fees from other regulators and, coupled with membership fees of professional bodies and professional indemnity insurance, have limited capacity to fund an additional cost recovery levy.
- Learning from the model in the United Kingdom (UK), which operates a multiagency supervision model, we support a single regulator, AUSTRAC.
  - The UK experience has shown multiagency supervision results in disparity amongst supervisors' interpretation and application of the AML/CTF regime, which in turn creates an additional cost to businesses.

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<sup>1</sup> Australian Bureau of Statistics, 8165.0 Counts of Australian Businesses, Table 13\_a, accessed 24 August 2021

## About Chartered Accountants Australia and New Zealand

Chartered Accountants Australia and New Zealand (CA ANZ) represents more than 130,000 financial professionals, supporting them to build value and make a difference to the businesses, organisations and communities in which they work and live.

Around the world, Chartered Accountants are known for their integrity, financial skills, adaptability and the rigour of their professional education and training.

CA ANZ promotes the Chartered Accountant (CA) designation and high ethical standards, delivers world-class services and life-long education to members and advocates for the public good. We protect the reputation of the designation by ensuring members continue to comply with a code of ethics, backed by a robust discipline process. We also monitor Chartered Accountants who offer services directly to the public.

Our flagship CA Program, the pathway to becoming a Chartered Accountant, combines rigorous education with practical experience. Ongoing professional development helps members shape business decisions and remain relevant in a changing world.

We actively engage with governments, regulators and standard-setters on behalf of members and the profession to advocate in the public interest. Our thought leadership promotes prosperity in Australia and New Zealand.

Our support of the profession extends to affiliations with international accounting organisations.

We are a member of the International Federation of Accountants and are connected globally through Chartered Accountants Worldwide and the Global Accounting Alliance. Chartered Accountants Worldwide brings together members of 13 chartered accounting institutes to create a community of more than 1.8 million Chartered Accountants and students in more than 190 countries. CA ANZ is a founding member of the Global Accounting Alliance which is made up of 10 leading accounting bodies that together promote quality services, share information and collaborate on important international issues.

We also have a strategic alliance with the Association of Chartered Certified Accountants. The alliance represents more than 870,000 current and next generation accounting professionals across 179 countries and is one of the largest accounting alliances in the world providing the full range of accounting qualifications.