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

Dear Committee Secretary

Submission to the Legal and Constitutional Affairs Legislation Committee inquiry into the Anti-Money Laundering and Counter-Terrorism Financing Amendment Bill 2024

National Australia Bank (NAB) welcomes the opportunity to respond to the Legal and Constitutional Affairs Legislation Committee (Committee) regarding the inquiry into provisions of the Anti-Money Laundering and Counter-Terrorism Financing Amendment Bill 2024 (Bill).

NAB strongly supports the AML/CTF reform objectives which aim to strengthen Australia’s ability to detect, deter, and disrupt financial crime, while aligning with international standards set by the Financial Action Task Force (FATF). NAB also supports the extension of 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. NAB welcomes many of the reforms that seek to improve the effectiveness of the AML/CTF regime by making it simpler and clearer for businesses to comply with their obligations, and that seek to modernise the regime to reflect changing business structures, technologies and illicit financing methodologies.

However, after careful consideration of the Bill, NAB has some concerns about components of the reforms that do not support the objectives to simplify or modernise. Some amendments create more prescription and move away from risk-based approaches appropriate for the size and complexity of a business such as NAB. NAB anticipates that some of the amendments could impact the ability of customers to access banking services without enhancing financial crime risk identification or mitigation by their financial services provider. This includes the banking sector’s ability to service vulnerable customers.

As a member of the Australian Banking Association (ABA), NAB has contributed to and supports its submission. NAB encourages the Committee to consider the ABA’s proposed revisions and suggested actions to ensure the reforms best meet the objectives for a simpler and more modern financial crime regime that is capable of being implemented and which truly achieves better financial crime risk prevention and detection. NAB’s submission seeks to amplify some key issues contained in the ABA’s submission for the Committee’s benefit.



1. Transfers of Value (Travel Rule) & International Value Transfer Services (IVTS, previously International Funds Transfer Instructions (IFTI) Report)

NAB recommends the removal of the proposed amendments on Travel Rule and IVTS and suggests further consultation with industry on appropriate reforms. Obligations imposed in connection with value transfers should be clear and capable of being actioned in close to real-time given the nature of modern banking and customer needs. The concepts as drafted are ambiguous and risk impairing financial institutions' ability to facilitate payments efficiently. The proposed amendments create different concepts than those articulated in the FATF recommendation. Specifically, the definitions of “ordering institution” and “beneficiary institutions” are not aligned to the current FATF definitions.

FATF's current definition of an ordering financial institution is structured around who initiates the wire transfer, and its definition of a beneficiary financial institution is structured around who makes the funds available. In February 2024, FATF also conducted a public consultation on the proposed uplift to Recommendation 16 and associated Interpretive Note in relation to the Travel Rule, part of which includes redefining the definitions of ordering financial institution and beneficiary financial institution. Other jurisdictions, such as the United States, European Union, New Zealand, and Singapore are in line with either the current or the proposed definitions by FATF under the Travel Rule. If the proposed definition in the Bill is adopted, contrary to practices in these other jurisdictions, it could potentially put Australian businesses at a competitive disadvantage due to additional regulatory requirements.

There is a risk that the reforms as currently drafted may not align with FATF's recommendation with respect to the role of the beneficiary financial institution. Cl 63A(6)(a)-(b), which introduces other roles (if they exist), could take precedence over the FATF's proposed role for a beneficiary financial institution. As a result, this could shift the obligation of verifying the beneficiary away from banks and remitters to the newly introduced roles.

The determination by an institution of the role it plays compared with other institutions involved in a value transfer chain against a descending order of priority is a new concept. The Explanatory Memorandum does not clearly articulate how these definitions should be applied, posing potential interpretation challenges for reporting entities. This ambiguity creates real risks of delays or failures to obtain or pass on the required information and obscures the roles and responsibilities for IVTS reporting. It may also lead to duplication of effort or potentially gaps in roles if multiple persons consider themselves the ordering institution in relation to a particular payment instruction, ultimately impacting the intended faster and simpler Australian payments ecosystem for customers and the community as well as intelligence gathering through IVTS reporting.

The ‘incidental value transfer’ exemption has not been fully explained in the Explanatory Memorandum – for example, whether online marketplaces and payment solution companies that are involved in a value transfer chain are in scope of the exemption, or to what extent their activity can be exempted. The ambiguity in applying this exemption could further complicate the determination of roles and responsibilities for supplying the required information.

As an overarching comment, NAB considers that any changes to the Travel Rule and IVTS should be informed by broader changes to the payments landscape, including initiatives in the Strategic Plan for Australia's Payment Systems (for example, adoption of ISO20022 messaging format for High Value Clearing System), to ensure that future investment in related infrastructure is developed safely, efficiently, and holistically. A measured approach would also enable reporting entities to strike an appropriate balance between prioritising technology changes to meet reporting requirements and those which are intended to improve customer experience and serve customer needs.

Given the significant time and financial investment in existing funds transfer frameworks and their importance to both the Australian and international financial systems, it is essential that the proposed

changes are carefully examined, and that reporting entities are provided with a reasonable implementation period to safely transition to any new framework.

2. Customer Due Diligence (CDD)

NAB agrees with the objective to simplify the current AML/CTF regime's customer due diligence (CDD) framework and enable CDD requirements to be more 'outcomes-focused'. However, as noted in the ABA submission, various changes do not meet this objective and instead create change that is unlikely to lead to any greater financial crime risk identification and will have a detrimental impact on customers, the overwhelming majority of whom are not the target of this legislation.

The greater level of prescription for customer information and the requirement to complete verification or screening of customer information *prior* to providing banking services (see Cl28 - 32) would introduce unnecessary complexity, potentially slow down banking services (particularly the opening of new products), and risk creating poor customer outcomes and experience (particularly for vulnerable customers) whilst not reducing the risk of criminal compromise.

The Bill proposes amendments to take effect on 31 March 2026, which would require substantial updates to existing processes and technology solutions to enable compliance with the amended CDD obligations. The changes would require extensive planning, design and testing prior to deployment, potentially causing disruptions to operations and NAB's ability to provide critical services to our customers. NAB considers it will be extremely challenging to undertake the necessary change activity prior to the proposed commencement date.

Of final concern are the reforms dealing with non-compliance (for example, Cl28 and Cl29), which suggest that a reporting entity would continue to be exposed to civil penalties notwithstanding that the reporting entity has cured any non-compliance. This would mean the only remedy a reporting entity could take to avoid ongoing civil penalties would be to terminate its relationship (de-bank) with any customer onboarded outside of the prescriptive approach set out in the Bill.

3. Scope of AML/CTF policies

The current framing of sections such as proposed section 26G (reporting entities must comply with AML/CTF policies) would require strict compliance with all activities referred to in the policies, procedures, systems and controls. This change, combined with the requirement to develop policies to 'ensure' compliance in section 26F, risks driving a compliance-centric approach over a risk-based approach aimed at financial crime detection and disruption.

Conversely, incorporating a "reasonable steps" test in sections relating to compliance with AML/CTF policies would mitigate the risk of inadvertent breaches while still requiring that appropriate policies are in place and followed. In NAB's view, these changes would help focus the reforms on the risk while also bringing simplicity to small businesses encountering AML/CTF regulation for the first time.

4. Section 123 - Tipping Off

NAB supports the suggestion in the ABA's submission to reinstate the exception in the AML/CTF Act that allows disclosures in compliance with Australian law, as its removal creates uncertainty around when disclosures can be made to comply with other laws. Clarifying these points would ensure employees could confidently fulfill their legal obligations without unnecessary risk.

5. Keep Open Notices

NAB supports the ABA's submission that the current exemptions under Chapter 75 of the Rules should be maintained and that a more appropriate threshold for when keep open notices could be issued is required.

NAB thanks the Committee for the opportunity to contribute feedback on these critical reforms. We commend the Government's efforts in strengthening Australia's AML/CTF framework, which is vital in the ongoing fight against financial crime and ensuring alignment with international standards set by FATF. Whilst the proposed changes are a significant step forward, there are areas that could be further refined

through continued industry consultation and collaboration. NAB is committed to assisting the Committee to ensure the reforms deliver optimal outcomes for the broader community, the financial industry and Australia's economic resilience.

Kind regards,

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