

**TREASURY SUBMISSION TO THE SENATE LEGAL AND
CONSTITUTIONAL LEGISLATION COMMITTEE INQUIRY
INTO THE EXPOSURE DRAFT OF THE ANTI-MONEY
LAUNDERING AND COUNTER-TERRORISM FINANCING
BILL 2005.**

Treasury welcomes the opportunity to provide comment on the exposure draft of Anti-Money Laundering and Counter-Terrorism Financing Bill 2005 (the exposure Bill). Treasury has been working closely with the Attorney-General's Department (AGD) in the reform process to develop a whole of government approach to anti-money laundering and counter-terrorism financing (AML/CTF) reform.

Treasury's interest in the proposed reforms to Australia's AML/CTF regime stems from its policy responsibility for promoting a well-functioning and competitive financial system. The new AML/CTF regime gives rise, in many respects, to substantially new obligations and requirements on the financial sector as well as more broadly. Certain financial institutions and intermediaries will be subject to these obligations for the first time. As a result, it is important that the policy objectives of AML/CTF reform be appropriately balanced against the need to promote the efficient operation of the financial sector through minimising compliance costs on business.

Treasury agrees that the reforms need to ensure compliance with the objectives of the Financial Action Task Force on Money Laundering (FATF) international standards and is supportive of a flexible legislative framework to achieve such compliance. It is important that the adoption of these standards in Australian law, through the further development of the exposure Bill and accompanying rules, has regard to the domestic context, and that compliance requirements be comparable to those adopted in relevant overseas jurisdictions, such as the UK and the USA.

Following the Government's decision to combat terrorist financing through the implementation of the FATF recommendations, and since the release of the FATF mutual evaluation report into Australia's existing AML/CTF regime, AGD has been undertaking a comprehensive consultation program on the new AML/CTF requirements. Treasury supports this consultation process, and considers it desirable that the goodwill it has created continue, and that the momentum for reform is maintained. Key features of the consultation process to date include:

- A series of Ministerial meetings between the Minister for Justice and Customs, officials from AGD and AUSTRAC, and representatives of the financial and other affected sectors.
- Release of an exposure Bill and some draft subordinate legislation for an initial period of four months.
- The establishment of a formal consultative framework comprising an overarching Advisory Group and joint industry/regulator technical working groups.

During consultation, a range of issues has been raised not only relating to the consultation process itself, but also to specific aspects and obligations of the AML/CTF reforms. Many of these have been addressed and are reflected in the exposure Bill. The consultations on the exposure Bill have, however, raised a number of new issues as well as some residual concerns. Outlined below are some of the major issues that Treasury understands continue to be of concern to industry:

- uncertainty in relation to the final compliance burden, as the rules providing further detail of obligations in the Bill are yet to be finalised;
- the implementation date and appropriate transitional arrangements; and
- the need to ensure that obligations are commensurate with the level of risk.

Package of reforms

As noted, extensive consultations were undertaken with the financial sector prior to the release of the exposure Bill. During these consultations it was agreed that the legislation would be principles based and would set out the broad obligations with which industry would need to comply. The detailed operational requirements are to be outlined in subordinate legislation such as rules.

This is consistent with Government's approach to legislative design in a range of other areas.

Nevertheless, Treasury's experience in implementing broad-ranging financial sector reform, such as the *Financial Services Reform Act 2001* (FSR Act), has demonstrated that the availability of a full package of reform proposals is desirable to allow industry to understand the range of requirements under which they are placed and thereby ascertain their compliance costs and necessary system and personnel changes. Given this, it would be desirable for industry to have the opportunity to comment on the full package of AML/CTF measures. To date we note that significant obligations are yet to be specified in rules and provided to industry for their consideration.

Implementation

As with any major reform, Treasury is keen to ensure that industry is provided with sufficient lead time to implement the AML/CTF requirements. This is particularly necessary where the measures necessitate substantial changes to information systems and processes, and require training for staff so that they can discharge their obligations under the legislative regime. In supporting this approach we are mindful of the experience in implementing the FSR Act which demonstrated that industry requires a sufficient implementation period to allow it time to understand its new obligations and their implications at a practical level. In addition, industry will often call for guidance as to how it can meet its new obligations and in this regard it is important for policy advisers to remain engaged to ensure that implementation of the measures proceeds in a way that is consistent with the policy intention.

As part of implementation it is essential that AUSTRAC be equipped to fulfil its new regulatory mandate and necessary capacity building should commence as soon as possible.

Compliance through a risk based approach

The objective of the reforms is to meet international standards in a way which takes account of the Australian regulatory environment. In developing reforms, Treasury has been mindful of the need to minimise the costs of compliance and regulatory burden on business.

The financial sector comprises a broad range of institutions and service providers offering a diverse suite of products with varying features and risk profiles. The application of the AML/CTF obligations should take that diversity into account and ensure that the intensity of obligations is commensurate with the risks posed by particular products, the profile of the customer and the delivery method of the financial service. Industry has argued that some products or services are low risk in nature and do not require the same stringent application of all AML/CTF obligations as may be appropriate for higher risk products or services. For example superannuation, life insurance and some services provided by financial planners may only need to be subject to relatively limited obligations. Treasury is aware that further consideration is being given to a risk based approach in light of consultations between AGD, AUSTRAC and industry.

Conclusion

While there remain a number of outstanding issues, it is important for industry and Government to continue to work together. Both parties have a stake in a successfully implemented regime. Treasury will continue to work with AGD and industry in advancing the reform process.