APPC
Australian Public Policy Committee

Promoting positive public policy outcomes in respect of audit, accounting, and related services in Australia

via email: economiccrime@ag.gov.au

Reforming Australia's anti-money laundering and counter-terrorism financing regime.

Key points:

- The Australian Public Policy Committee (APPC) members support the extension of the AML/CTF regime to tranche-two entities, which would include services offered by the accounting profession, and are committed to contributing to a robust system to prevent criminals from using Australia for illegal activities.
- APPC member firms currently conduct extensive customer due diligence (CDD) checks in line with existing business and ATO/TPB requirements that should be considered when extending the AML/CTF regime to tranche-two entities.
- APPC member firms have existing client onboarding processes that would be broadly similar to the current AML/CTF requirements. Consequently, we recommend that the regulatory relief provided to tranche-one entities for pre-commencement customers be granted to tranche-two entities as well. This should involve the government recognising previous risk assessments that have been conducted by tranche-two entities when onboarding customers.
- APPC members recommend the government consider a transitional period in line with that offered to tranche-one entities when the *Anti-Money Laundering and Counter-Terrorism Financing Act 2006 (Cth)* (AML/CTF Act) first came into force. We understand that tranche-one entities had a 2-year staggered implementation of requirements plus a 15-month Policy Principles period in which the Minister advised publicly that AUSTRAC would not take enforcement action if the reporting entity was taking reasonable efforts to comply. The same transitional period should be afforded to tranche-two entities.
- APPC members recommend that the government provides clear guidance on what Ongoing CDD, 'monitoring transactions', and monitoring for Suspicious Matter Reports (SMRs) would practically mean for Professional Service Providers (PSPs). For example, would this include just monitoring for designated services and/or include monitoring of other professional services provided to the same client that are not themselves designated services.
- APPC members recommend the Attorney-General's Department work with Treasury to finalise the beneficial ownership register to help tranche-two entities more efficiently comply with the regime. We note that in some countries, such as the UK, beneficial ownership information for companies is publicly available online. We also recommend that company information required for Know Your Customer (KYC) checks be made freely available, as is the case in UK and New Zealand.

The APPC appreciates the opportunity to respond to the Modernising Australia's anti-money laundering (AML) and counter-terrorism financing (CTF) regime Consultation Papers (the Consultation Papers).

APPC members support the government's initiative to combat money laundering and terrorism financing and recognise the importance of Australia meeting its obligations as a member of the Financial Action Task Force (FATF). To meet these obligations, we support the extension of the AML/CTF regime to tranche-two entities, which includes services offered by the accounting profession, noting that some APPC members represent multidisciplinary firms with accounting, legal, trust, company service, and real estate service offerings (tranche-two entities). APPC members are committed to contributing to a robust system to prevent criminals from using Australia for illegal activities.

About the APPC

The APPC comprises the six largest professional services firms in Australia being BDO, Deloitte, EY, Grant Thornton, KPMG and PwC (APPC member firms) as well as the professional accounting bodies being Chartered Accountants Australia and New Zealand and CPA Australia. Our objective is to promote positive public policy outcomes in respect of audit, accounting and related regulated services.

While some APPC member firms provide AML/CTF services to support currently regulated entities, this submission responds to questions that relate to the extension of the regime to designated services offered by accounting professionals only.

APPC Response

Transition periods and regulatory relief for pre-commencement customers

APPC member firms recommend the government consider a transitional period in line with that offered to tranche-one entities when the AML/CTF Act first came into force. We understand that tranche-one entities had a two year staggered implementation of requirements plus a 15-month Policy Principles period in which the Minister advised publicly that AUSTRAC would not take enforcement action if the reporting entity was taking reasonable efforts to comply. We also understand that New Zealand had a staggered approach to the requirements applying across tranche two entities i.e. June 2018 for lawyers and October 2018 for accountants. A similar staggered transitional period should be offered to tranche-two entities.

In addition, in recognition of APPC member firms' existing client onboarding requirements (that are driven by the Tax Practitioners Board (TPB) requirements, professional standards and risk management policies), the APPC considers that the regulatory relief provided to tranche-one entities for pre-commencement customers should also be granted to tranche-two entities. We also note that some APPC members already perform ongoing risk assessments. In particular, tranche-one entities did not have to undertake customer identification and verification for all pre-commencement customers at the time the AML/CTF Act was implemented, and this should also apply to tranche-two entities.

The APES 110 Code of Ethics for Professional Accountants, released by the Accounting Professional & Ethical Standards Board (APESB), sets out the requirements of all members of the professional accounting organisations in responding to non-compliance or suspected non-compliance with laws and regulations (NOCLAR). NOCLAR comprises of acts of omission or commission, intentional or unintentional, committed by a client, or by those charged with governance, by management or by other individuals working for or under the direction of a client, which are contrary to the prevailing laws or regulations. NOCLAR provides a framework for all professional accountants on how best to act in the public interest when they become aware of non-compliance or suspected non-compliance with laws and regulations. It allows members to set aside the principle of confidentiality and report NOCLAR to an appropriate authority, if that is in the public interest.

Given the above, the government could recognise the risk assessments previously conducted on APPC member firms' customers during onboarding when considering pre-commencement customers. If the same regulatory relief is not afforded to tranche-two entities, at a minimum, there should be flexibility in the length of time tranche-two entities are given to identify, verify and risk rate pre-commencement customers. In that regard, we would recommend a minimum period of no less than 18-months to complete all KYC checks.

ASIC company searches and beneficial ownership register

One way to obtain beneficial ownership information is to ask this information from a customer. However, in order to independently verify this information the information would have to be purchased from the ASIC website at a cost of $10 for each report. If a report is purchased for a customer that is a company, and it is found that this company has one or more shareholders who own 25% or more of the company and are not individuals, then further reports would have to be purchased. In other jurisdictions this information is freely available and APPC members respectfully request that such information also become freely available in Australia.

In addition, we recommend that the Attorney-General's Department work with Treasury to finalise a beneficial ownership register. We understand that the finalisation of the beneficial ownership register is government policy and the creation of such a register will be beneficial for all AML/CTF entities when undertaking CDD.

Designated services

We appreciate that the starting point for the designated services is the FATF standards and preparing for or carrying out transactions for clients related to the buying and selling of assets. The proposed designated services should be tied to transactions, so that pure advisory or administrative services are not captured.

Further, APPC members understand that some tranche-two AML/CTF regimes in other jurisdictions have encountered confusion and unintended consequences when specifying activities covered, so we recommend the following be closely considered for exemption in consultation with industry, for example:

- tax transfers and associated ML/TF risk;
- merger & acquisition activities not related directly to the buying and selling of assets;
- providing compliance assistance, e.g. filing annual returns, preparing solutions for clients;
- providing formal insolvency services provided by registered liquidators and registered trustees in bankruptcy; and
- trust and company service providers where the risk is considered 'low' and no financial transactions are carried out on behalf of clients.

Ongoing CDD and SMR reporting

Ongoing CDD obligations require reporting entities to monitor and understand their customers on an ongoing basis. Ongoing CDD must also (among other things) enable a reporting entity to monitor transactions and *behaviours* that are unusual or suspicious and give rise to SMR obligations under section 41 of the Act. For large, multidisciplinary firms that might provide a designated service to a client, together with multiple other professional services (provided by other teams) that are not designated services, key issues and challenges include:

- determining the scope and breadth of ongoing monitoring of behaviours, activities or transactions of the client in relation to those other professional services; and
- ensuring that any internal sharing of information (if required) as part of ongoing CDD and monitoring for SMR reporting do not breach conflict of interest and confidentiality obligations.

In the circumstances, APPC members recommend:

- clarity is provided on the scope and breadth of ongoing CDD and monitoring requirements to identify potential SMRs;
- confirmation that firms are entitled to determine and document in their AML/CTF Programs, their risk-based approach to Ongoing CDD and SMR monitoring;
- information that firms are expected to know (and required to consider when determining whether there is a 'suspicious matter'):
    - should be limited to information known by and/or reasonably available to the relevant team providing the designated service; and
    - should *not* include all information existing in the firm, including those known by and/or reasonably available to other parts of the firm, especially information that is potentially subject to conflicts of interest or confidentiality obligations.

Noting the above, APPC members consider this risk can be partially mitigated with clear guidance and the rollout of AML/CTF training across the whole organisation that would include SMR obligation awareness.

Independent review of AML/ CTF program

Where some tranche-two entities are deemed lower risk, consideration should be given to the obligation to undertake independent reviews. For example, in New Zealand there are AML audit cycles that change depending on risk profile i.e. lower risk will have 4-year audit cycle, but higher risk entities will have 3-year audit cycles. We note that in Australia, entities are required to undertake an independent review with no defined timeframe, but many tranche-one entities choose to conduct reviews based on their risk profile. We would recommend that this approach is extended to tranche-two entities, noting that Consultation Paper 5 refers to a potential minimum frequency of every 4 years.

We also encourage the government to consider an accreditation scheme for independent reviewers, similar to the current Greenhouse and Energy Auditors register[1], so that reviews are robust and meet minimum requirements. We note that Consultation Paper 5 refers to the development of the detail around the minimum standards for auditors.

Retention of documents

The APPC also recognises the exponential increase in cyber crime with the cost to business increasing 14% in 2021-22[2]. Of particular relevance, the most frequently reported cyber crime was online fraud: approximately 27%[3]. We consider it critical that the AML/CTF regime seeks to clearly state that the retention of identity documentation is not required and instead the obligation is to record the type of document sighted, the date sighted, document reference number and the date of issue.

Business groups

In response to questions A and C, Consultation Paper 5 proposes that related entities within a business group that perform functions to support regulated entities comply with AML/CTF obligations be captured under a designated business group, whether or not they are themselves regulated entities. We support this amendment, especially given the sometimes-complex structures of tranche-two entities, for example, partnerships with associated entities (as defined in section 50AAA of the Corporations Act 2001 (Cth). The Modern Slavery statements of APPC members provide an indication of structures.. For example, a professional services firm may have a partnership entity and other associated entities including service trusts, and entities that may extend outside Australia. We support the proposed amendments being sufficiently flexible so that designated business groups can adopt appropriate risk structures and controls within the group risk management framework to reflect the nature of services provided by reporting entities. The definition of 'designated business groups' must be suitable and appropriate for tranche-two entities. We would welcome further consultation in relation to designated business groups when related rules are being drafted.

Tax agents and BAS agents and other applicable requirements

On 31 January 2022, the TPB released guidelines[4] on strengthened requirements for the verification of the identity of individual and non-individual clients and their representatives.[5] This was in addition to the guidelines released by the Australian Taxation Office (ATO) on verification methods,[6] which apply for tax and BAS agents who use the ATO's online services. The TPB guidelines apply to all tax practitioners who provide tax agent and/or BAS agent services, regardless of whether they use the ATO's online services or not. It is

[1] Find an auditor | Clean Energy Regulator (cer.gov.au)
[2] ACSC Annual Cyber Threat Report, July 2021to June 2022 at https://www.cyber.gov.au/about-us/reports-and-statistics/acsc-annual-cyber-threat-report-july-2021-june-2022.
[3] Ibid.
[4] TPB(PN) 5/2022 Proof of identity requirements for client verification | Tax Practitioners Board
[5] Client verification process for tax practitioners | Tax Practitioners Board (tpb.gov.au)
[6] Agent Client Verification methods | Australian Taxation Office (ato.gov.au)

understood that the guidelines were intended to assist tax agents to meet their obligations under the *Tax Agent Services Act 2009* (Cth) and aimed at reducing identity theft and tax fraud.

The TPB guidelines include minimum Proof of Identity (POI) requirements for tax agents before providing tax or BAS agent services to new clients and on an ongoing basis to existing clients as appropriate. These guidelines detail the client information tax agents should be verifying, and the types of documents tax agents can sight to verify a client's identity.[7] Where an individual is representing a client (including individual and non-individual clients) in engaging the registered tax agent, these guidelines also require that the registered tax agent take steps to ascertain and verify the individual representative's identity, and the authority for the individual representative to engage the registered tax agent and how this can be done.

The TPB guidelines include a POI exemption for clients whose identity is considered to be well-established. Registered tax agents are required to exercise their professional judgement when making an assessment about whether a client or individual representative is a well-established client and whether or not it remains appropriate to undertake POI steps.

In light of the mandatory requirements under the Tax Agent Services Act, it is expected that all tax agents providing tax agent and BAS agent services have implemented client verification procedures when onboarding new clients.

We encourage the Attorney-General's Department and AUSTRAC to minimise the requirements for document retention and set out whether existing TPB POI requirements meet the standards of CDD under the proposal.

Thank you again for the opportunity to provide our views. Should you have any further questions on our submission, please do not hesitate to reach out.

Shaun Kendrigan

Chair of the APPC

[7] TPB(PN) 5/2022 Proof of identity requirements for client verification | Tax Practitioners Board - paragraphs 8 - 12