



FINANCIAL PLANNING
ASSOCIATION *of* AUSTRALIA

27 August 2021

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

Dear Sir / Madam

The adequacy and efficacy of Australia's anti-money laundering and counter-terrorism financing (AML/CTF) regime.

The Financial Planning Association of Australia¹ (FPA) welcomes the opportunity to provide feedback on the adequacy and efficacy of Australia's anti-money laundering and counter-terrorism financing (AML/CTF) regime.

We would welcome the opportunity to discuss with the Senate Legal and Constitutional Affairs References Committee any matters raised in our submission. If you have any questions, please contact me on 02 9220 4500.

Yours sincerely

Ben Marshan CFP® LRS®
Head of Policy, Strategy and Innovation
Financial Planning Association of Australia

¹ The Financial Planning Association (FPA) is a professional body with more than 12,000 individual members and affiliates of whom around 8,500 are practising financial planners and 5,207 are CFP professionals. Since 1992, the FPA has taken a leadership role in the financial planning profession in Australia and globally:

- Our first "policy pillar" is to act in the public interest at all times.
- In 2009 we announced a remuneration policy banning all commissions and conflicted remuneration on investments and superannuation for our members – years ahead of the Future of Financial Advice reforms.
- The FPA was the first financial planning professional body in the world to have a full suite of professional regulations incorporating a set of ethical principles, practice standards and professional conduct rules that explain and underpin professional financial planning practices.
- We have an independent Conduct Review Commission, chaired by Dale Boucher, dealing with investigations and complaints against our members for breaches of our professional rules.
- We built a curriculum with 18 Australian Universities for degrees in financial planning through the Financial Planning Education Council (FPEC) which we established in 2011. Since 1 July 2013 all new members of the FPA have been required to hold, or be working towards, as a minimum, an approved undergraduate degree.
- When the Financial Adviser Standards and Ethics Authority (FASEA) was established, the FPEC 'gifted' this financial planning curriculum and accreditation framework to FASEA to assist the Standards Body with its work.
- We are recognised as a professional body by the Tax Practitioners Board.



FINANCIAL PLANNING
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THE ADEQUACY AND EFFICACY OF AUSTRALIA'S ANTI-MONEY LAUNDERING AND COUNTER- TERRORISM FINANCING (AML/CTF) REGIME.

Senate Legal and Constitutional Affairs References Committee

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Item 54 reporting entities

Financial planners who provide personal financial advice to retail clients on relevant financial products are authorised by Australian Financial Services Licensees (AFSLs). Generally, AFSLs are item 54 reporting entities for AML/CTF purposes and are required to have in place an AML/CTF Program B appropriate to for the AML risk of the entity, and related customer due diligence procedures.

The structure of the advice market is unique - it has a large number of small businesses who hold and operate under their own AFSL. ASIC data shows 88% of financial advice licensees are small businesses operating a firm with less than 10 financial advisers (<https://wealthdata.com.au/adviser-movement-fast-facts> August 2021). There is also a large number of small business financial planning practices that are authorised and operate under the AFSL of a large dealer group. Such dealer groups may also have employed advisers.

The FPA's submission focuses on financial planners' experience in implementing and meeting the AML/CTF obligations. As many financial planning practices are small businesses, these insights may be helpful in relation to Tranche 2 entities and any new requirements put in place regarding new AML/CTF obligations.

Overview of the main issues facing item 54 reporting entities

Under the Corporations Act, financial planners must undertake a 'fact find' of their client's circumstances to ensure the advice they provide and the recommendations they make are in the best interests and appropriate for their client. The CDD requirements of Program B of the AML/CTF Act complement these financial advice obligations. The financial planner's 'fact find' also gives them a greater insight and understanding of the client's situation and can assist in identifying potential suspicious matter reporting (SMR) incidents for AML purposes.

The most significant challenge for financial planners meeting their AML/CTF obligations as item 54 reporting entities, relates to providing ACIP under a third-party reliance arrangement.

As the provisions in the AML/CTF Act and rules are principles based to cater for the significant diversity of the entities they apply to, each individual reporting entity's AML/CTF program must be specific to the AML/CTF risk based on the entity's services, operations, and customers. Financial planners have systems and processes in place to meet their AML/CTF obligations based on their AML/CTF risk as set out in their Program B. However, challenges can arise when product providers impose additional requirements on planners based on the product provider's Program A AML obligations, which may be outside financial planners' established processes and systems.

Those entities that provide financial transaction services, such as banks, super funds, managed investment schemes and other financial product providers, pose a higher AML/CTF risk than financial planners who provide regulated financial advice strategies and recommendations. This creates significant tension between the Program B AML/CTF processes of financial planners and Program A AML/CTF requirements of financial institutions. This can result in product providers imposing some of their program A requirements onto planners as third party reliance entities, requiring planners to undertake additional due diligence.

The ability for financial product providers to rely on the CDD undertaken by financial planners was established with the introduction of the AML/CTF regime. The financial services industry responded by establishing a streamlined process for customer identification and verification - the FPA and Financial Service Council (FSC) produced and implemented a joint AML/CTF Guidance Note and series of Customer ID Forms to assist product providers and financial planners to implement their AML/CTF CDD/ACIP programs.

The aim of these documents was to minimise the need for each entity developing their own unique form and format requirements. This would have resulted in customers needing to complete a separate form for each product and each product provider.

However, the use of the joint FPA/FSC AML/CTF Guidance Note and customer identification forms are not compulsory. While most FSC and FPA members use the forms for the efficiency benefits they offer both the entities and their customers, superannuation funds, industry super funds and product providers who are not members of the FSC do not commonly use the forms.

Different forms used by different product providers result in financial planners needing to use multiple forms, provide different information or proof, require different certifiers and often repeating CDD processes multiple times for the consumer which is time consuming, inefficient, adds additional cost for the consumer and increases the risk of inadequate customer identification.

Over recent years, the four large banks (Westpac, NAB, CBA, ANZ), AMP and Macquarie, have significantly reduced their presence in the personal financial advice to retail client market, by selling off the wealth management arms of their business. This means a number of item 54 reporting entities will no longer be a member of the designated business group (DBG) of these large institutions. This will remove their ability to carry out and rely upon the AML obligations carried out by other DBG members in relation to conducting ongoing customer due diligence, making and retaining records of customer identification procedures, providing and retaining copies of customer identification records. This may, in turn, result in an increase in the use of different CDD forms by industry.

Financial Action Task Force: Mutual Evaluation Reports and 3rd Enhanced Follow-Up Report

The FPA provides the following feedback regarding the FATF recommendations, which relate to item 54 reporting entities.

FATF Recommendation 1 – Assessing risk

Reporting entities capacity to effectively assess the AML/CTF risk of the entity should be enhanced through greater education and training. Information provided by AUSTRAC has been helpful in improving item 54 reporting entities and financial planners' understanding of the obligations under the AML/CTF regime. This includes AUSTRAC's guidance and resources (including information on its website), and its sector risk assessments. The compilation of the AML rules has helped simplify obligations and made it easier for reporting entities to navigate.

Financial planners authorised by item 54 reporting entities (AFSLs) are obliged to meet education requirements at AQF7 level, and undertake CPD on all relevant Acts, including the AML/CTF Act, to be licensed and registered to provide personal financial advice to retail clients on relevant financial products.

FATF Recommendation 10 – Customer Due Diligence (CDD) –

The Financial Services industry has reviewed and updated its AML/CTF programs and joint FPA/FSC guidance and forms in line with the FATF 2015 and 2018 reports.

FATF Recommendation 26 - Regulation and supervision of financial institutions

Priority areas should be those where the risk of non-compliance or partial-compliance pose the greatest risk to Australia - for example, funds transfer and transactions.

FATF Recommendation 17 – Third Party Reliance

When the AML regime was introduced in Australia, the FPA and Financial Service Council (FSC) produced and implemented a joint AML Guidance Note and Customer ID Forms to assist product providers and financial planners to implement their AML/CTF CDD/ACIP programs.

These resources were updated to comply with the FATF requirements. FPA members have been acting as a third party for ACIP for financial entities since the establishment of the AML/CTF regime. Third party reliance requirements were recently enhanced to require entities who rely on third parties for CDD to conduct biannual reviews of the third-party reliance arrangements to ensure they can be satisfied an AFSL's ACIP can be relied upon to meet the AML/CTF Program A of the product provider, and that licensees are able to provide product providers with CDD information and documentation. The changes also clarify that third parties must be a reporting entity with an AML CDD program in place. These changes are being implemented by the industry following the commencement in June 2021.

Attorney-General's Department statutory review of the *Anti-Money Laundering and Counter-Terrorism Financing Act 2006*

The FATF Recommendations include standards for the regulation of Designated Non-Financial Businesses and Professions (DNFBPs). As detailed in the Inquiry's discussion paper, certain types of businesses and professions have been identified as being of greater risk of money laundering and terrorism financing, including: casinos, real estate agents, dealers in precious metals and stones, lawyers, notaries, other independent legal professionals and accountants, and trust and company service providers.

As noted in *The Report on the Statutory review of the anti-money laundering and counter-terrorism financing act 2006 and associated rules and regulations*, issued in April 2016:

“Transnational and Australia-based crime groups are increasingly making use of professional facilitators or ‘gatekeepers’ to the financial system, such as lawyers, accountants and trust and company service providers (TCSPs), to set up complex legal structures to disguise and launder criminal wealth. These gatekeepers may be unaware that their services are being exploited by criminals or ‘wilfully blind’ to the misuse. A small minority of gatekeepers may collude and operate as criminal facilitators.

Criminals can also exploit businesses involved in the buying and selling of high-value assets and goods to conceal the profits of their crime. This includes real estate, artwork, businesses and jewellery.” (page 33)

The Report further states that the FATF has observed a “...trend toward the involvement of various legal and financial experts, or gatekeepers, in money laundering schemes...”, noting that:

“.....the most significant [money laundering] cases each involve schemes of notable sophistication, which were possible only as a result of the assistance of skilled professionals to set up corporate structures to disguise the source and ownership of the money.”

The report highlights the level of criminal activity being undertaken via various professions outside of the financial advice industry, thus highlighting the AML/CTF requirements for those professionals who might be exposed to criminal activity.

The types of businesses identified in the Report as DNFBPs, such as Lawyers, accountants, real estate agents etc are commonly involved in setting up companies, trusts, SMSFs and facilitating

property purchases, for example. Whilst financial planners direct clients to certain types of businesses to establish trusts appropriate for families, estate planning, company set up etc or to assist with the purchase of an investment property for example, financial planners do not provide these services and are prohibited by law from receiving a fee for referring clients to any specific business entity. Financial planners will often suggest clients seek professional assistance for areas they cannot assist with, for example setting up a Trust. Furthermore, whilst financial planners can recommend the use of direct property as an asset class within their overall portfolio of assets, they are not able to advise on the actual property to purchase.

Therefore, real estate agents are the key providers who assist consumers in the actual investment/transaction in a property, which is often where large sums of money are spent. Purchasing property could potentially be used to shelter assets or launder criminal wealth.

The FPA agrees with the Financial Action Task Force (FATF) that *“these gatekeepers are in a unique position to collect and report information that may be critical in assisting law enforcement to identify ML/TF, and consequently requires they be subject to AML/CTF regulation.”*

The FPA recommends the priority area should be implementing tranche 2 which would see the regulatory obligation extended to Designated Non-Financial Business and Professions (DNFBPs), such as Lawyers, accountants and real estate agents. As financial planners are already required to have in place an AML/CTF Program B, and comply with the current Know Your Client rules when providing a designated service, any new obligations put in place for tranche 2 should not extend to financial planners and item 54 reporting entities.

Australian Transaction Reporting and Analysis Centre (AUSTRAC)

The FPA's experience has been that AUSTRAC has taken an educational approach to improve industry's understanding and compliance with the relevant AML/CTF requirements, balanced with sanctions for significant and systemic breaches as and when required.

Given our experience, and our ability to share insights from our members who are primarily small businesses, the FPA recommends a similar educational and consultative approach is taken with industry associations who represent DNFBPs in order to understand their industries and put in place appropriate measures to further to combat, detect and deter money laundering and terrorism financing to maintain the integrity and stability of financial markets.

Over recent years, information provided by AUSTRAC has significantly enhanced and simplified. It has been helpful in improving entities' and individuals' understanding of the obligations under the AML/CTF regime. This includes AUSTRAC's guidance and resources (including information on its website), and its sector risk assessments.

AUSTRAC's development of a single compilation of the full text of the AML/CTF Rules registered in instruments on the Federal Legislation Register, has significantly simplified the obligations and made it easier for reporting entities to find those Rules relevant to their AML Program and business activity. The AML rules relevant to tranche 2 should also be included in the AUSTRAC compilation of rules to assist DNFBPs.

Understandably due to the risk level of such entities, AUSTRAC's engagement with the financial services industry tends to focus on larger institutions and those entities with Program A obligation. However, the FPA would welcome greater engagement with the financial planning profession by AUSTRAC in the future.

The role of FinTech's in improving AML/CTF outcomes

One area where improvements in efficiency and red tape reduction can be found is in the use of "technology enabled ID verification" tools. A number of technology solutions have become available over the years which make better use of Government ID databases to ID verify consumers. Unfortunately, many financial institutions still require paper based, certified copies of ID to be provided. This creates significant privacy and cyber security risk for financial advice providers (the verifier who has to maintain records), product providers who store the information, but also for consumers who have certified copies of ID stored with a variety of locations.

The FPA recommends that AUSTRAC work with industry to identify appropriate technology solutions and encourage their uptake to improve security of consumer ID.