



Australian Government



Australian  
**Small Business and  
Family Enterprise**  
Ombudsman

15 July 2024

Economic Crime Section  
Attorney General's Department  
3/5 National Circuit  
Barton ACT 2600

via email: [economiccrime@ag.gov.au](mailto:economiccrime@ag.gov.au)

Dear Sir/Madam,

### **Reforming Australia's Anti-Money Laundering and Counter Terrorism Financing Regime**

The Australian Small Business and Family Enterprise Ombudsman (the ASBFEO) welcomes the opportunity to make a submission to the Attorney-General's Department (AGD) second stage consultation on reforming Australia's anti-money laundering and counter-terrorism financing regime (AML/CTF).

We recognise Australia's AML/CTF regime is critical in protecting the integrity of the Australian economy and failure to comply with the international standards set by the Financial Action Task Force (FATF) could have significant consequences for Australia's economy and law enforcement.

We support the intent of the reforms to the AML/CTF regime to include tranche-two businesses – lawyers, accountants, trust and company service providers, real estate agents and dealers in precious metals and stones. However, a significant number of businesses captured under this reform will be small businesses who may not have the administrative and financial resources to adequately understand and implement the proposed reforms.

In our first submission, dated 13 June 2023, we provided five practical recommendations. For this consultation we met with small business stakeholders to understand the challenges with the reforms and identify opportunities for where the AGD and associated entities such as Australian Transaction Reports and Analysis Centre (AUSTRAC) can provide support.

As such, we provide the following recommendations for the AGD's consideration:

#### **Recommendation 1. Conduct a targeted education and awareness campaign to support small and family businesses affected by the reforms.**

The government should conduct a targeted education and awareness campaign to raise small business understanding of the proposed expansion to the AML/CTF regime, and any necessary business process changes that will need to be implemented.

The expanded regime will capture many small businesses who are providers of professional services and real estate services. While no small business wants to unwittingly assist with criminal activity, the AGD and AUSTRAC can help small business to comply with the new obligations, by clearly communicating information relating to the changes, providing streamlined guidance, and developing appropriate resources. We acknowledge that AUSTRAC intends to work closely with these sectors to understand and meet their AML/CTF regime obligations.

We encourage early engagement to assist these small businesses with implementation and to ensure their businesses have appropriate time to understand and communicate to their stakeholders the effects of the reforms.



## **Recommendation 2. Provide sector-specific resources with practical information for tranche two businesses.**

The existing regime was developed primarily to regulate large organisations that have the administrative and financial resources to implement processes and procedures quickly.

The AGD proposes a streamlined AML/CTF program obligation with key elements in its *Paper 5: Broader reforms to simplify, clarify and modernise the regime*. While these obligations may be streamlined, the revised obligations risk overlooking the resourcing constraints of many small businesses.

We anticipate that many of the tranche-two businesses will be small businesses, who often have a smaller number of employees and do not necessarily have the skills or knowledge to understand the AML/CTF regime and its obligations. We recommend AUSTRAC review its resources and (where necessary) tailor guidance for small businesses, who generally do not have sophisticated organisational structures or administrative support, and who often face tight time-constraints.

We acknowledge AUSTRAC's AML/CTF regime e-learning modules and encourage AUSTRAC and the AGD to promote these resources to small businesses. We encourage AUSTRAC to review the e-learning modules for suitability and relevance to small businesses, and where appropriate tailor learning modules for accessibility to small business. We also encourage AUSTRAC to consider developing examples of customer due diligence processes and what an example AML/CTF program may include for a particular professional service provider or real estate provider.

There are examples of Commonwealth entities who already provide guidance to small businesses on complex topics that AUSTRAC may draw inspiration from. The Australian Financial Security Authority administers the Personal Property Securities Register (PPSR) and provides guidance to small businesses on the use of the PPSR and registering security interests. The Fair Work Ombudsman is another example of a Commonwealth entity that provides dedicated tools and resources to small businesses (including written advice) to help them understand and comply with the Fair Work Act.

## **Recommendation 3. Annual Compliance Reports should include the reporting entities' AML/CTF program.**

Reporting entities are required to create an AML/CTF program and Part A of the program is to be independently and regularly reviewed.<sup>1</sup> While we support the new requirement to have the program reviewed at a minimum of every 4 years (or sooner if changes to the business model are actioned), we urge the AGD to consider requiring *all* reporting entities to upload their program to AUSTRAC in their annual compliance report.

Requiring all reporting entities to submit their AML/CTF program, in addition to their annual compliance report, is a simple and quick procedure that would provide AUSTRAC with greater transparency of how entities are complying with Customer Due Diligence and Know Your Customer (KYC) requirements. This would enable AUSTRAC to perform meta-analysis of AML/CTF programs that would provide AUSTRAC with insight into where their education and awareness campaigns should be targeted to strengthen Australia's regulatory regime.

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<sup>1</sup> AUSTRAC, *Independent Reviews*, AUSTRAC, Australian Government, Accessed 13 June 2024.



**Recommendation 4. Ensure that the regime does not inadvertently encourage the ‘debanking’ of legitimate businesses.**

The ASBFEO has previously raised concerns with AUSTRAC regarding financial institutions using the regime to justify withdrawing or limiting banking services to small businesses in sectors considered high risk. We acknowledge AUSTRAC’s publication of guidance to financial institutions and to existing and prospective customers regarding ‘debanking’ and encourage AUSTRAC to promote this guidance more broadly to assist small businesses with their understanding.

However, we remain concerned that expanding the AML/CTF regime may inadvertently enable professional service providers and real estate providers to unreasonably decline services based on the broad risk profile of a particular industry sector. The Department of Finance of Canada’s review of its own AML/CTF program identified that some money-service businesses experienced difficulties maintaining accounts with legitimate financial institutions and risked driving financial transactions to informal channels that are less visible to regulators.<sup>2</sup>

We urge the AGD and AUSTRAC, as part of its education and awareness campaign to include specific information and guidance to professional service providers and real estate providers on assessing risk and the denial of services based on a small business customers industry sector.

Ensuring access to business advice and services provided by these tranche-two entities, and individualised assessment of risk, is essential to supporting Australia’s legitimate small and family businesses operating in all sectors, including those deemed to be operating in a high-risk industry sector.

**Recommendation 5. Reforms to the Privacy Act 1998, Digital ID Act 2024, and the 2023-2030 Australian Cyber Security Strategy should be considered so that impacts on AML/CTF are known and prepared for.**

The Australian Government is progressing reforms to other regulatory frameworks that may intersect with the AML/CTF regime, including the Privacy Act 1988, 2023-2030 Australian Cyber Security Strategy and the Australian Government Digital ID System. We encourage the AGD to consider these reforms together with the AML/CTF regime expansion and ensure that education, guidance, and resources are synchronised where appropriate.

Small businesses do not have the same administrative and financial resources as their larger counterparts. We recommend that the AGD consider both the distinctive characteristics of small businesses, and the number of simultaneous, complex regulatory changes affecting them, with a view reducing their administrative burden, and helping them improve their governance and durability.

**Recommendation 6. AUSTRAC should include examples of possible verification documents to assist small businesses with their ‘know your customer’ obligations, for customers that are not individuals and are a real entity. eInvoicing should also be incorporated into customer-verification procedures.**

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<sup>2</sup> Department of Finance, Canada, , Reviewing Canada’s Anti-Money Laundering and Counter-Terrorism Financing Regime, Department of Finance, 7 February 2018, p 39



Australian Government



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Family Enterprise**  
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Reporting entities are required to apply customer identification procedures, and Part B of the AML/CTF program focuses on 'know your customer' (KYC) obligations. This includes knowing the details of a customer who is not an individual and is an entity and its beneficial owners.

The KYC obligations require the reporting entity to verify at a minimum the full name of the company, the ACN and whether the entity is a proprietary or public company. While this information is obtained through a simple and free search of the ASIC register, we encourage AUSTRAC to provide guidance and examples of possible verification documents to prevent small business reporting entities from implementing unnecessary and costly processes for verification of entities.

eInvoicing could serve as an efficient and effective means of satisfying or simplifying KYC requirements. eInvoicing is the digital exchange of standardised invoice information between suppliers' and buyers' software through the secure Peppol (Pan-European Public Procurement On-Line) network. Australia has adopted the Peppol framework as the common standard and network for eInvoicing; and many accounting packages offer eInvoicing.

The Peppol network allows suppliers to enter an invoice into their business software and send it securely, with the supplier's Peppol certified access point sending the invoice and the buyer's certified access point receiving it. Access points use the buyer's Australian Business Number to retrieve the right destination details for the buyer from the Peppol service metadata locator and service metadata publishers. The buyer then uses their business software to receive the invoice.

Budget 2024-25 allocated \$23.3 million over four years from 2024-25 for the Australian Taxation Office to continue to oversee and operate the secure eInvoicing network. Incorporating eInvoicing into customer-verification procedures would encourage the adoption of eInvoicing by small businesses and reduce compliance costs.

If you require any further information, please do not hesitate to contact the Policy & Advocacy team at the ASBFEO, via email at [advocacy@asbfeo.gov.au](mailto:advocacy@asbfeo.gov.au).

Yours sincerely

**The Hon Bruce Billson**

Australian Small Business and Family Enterprise Ombudsman