



21 June 2024

Ms Caroline Yuan
Director | Economic Crime Section
Transnational Crime Branch
Criminal Justice Division
Attorney-General's Department
3/5 National Circuit, BARTON ACT
Submitted via email to: Caroline.Yuan@ag.gov.au

Dear Ms Yuan,

Reforms to Australia's anti-money laundering and counter-terrorism financing (AML/CTF) regime

The Australian Finance Industry Association ('AFIA')¹ appreciates the opportunity to respond to the Attorney-General's Department's ('AGD') second stage of reforms to Australia's anti-money laundering and counter-terrorism financing ('AML/CTF') regime ('Proposed Reforms').²

AFIA is the only peak body representing the entire finance industry in Australia.³

We represent over 150 members, including bank and non-bank lenders, finance companies, fintechs, providers of vehicle and equipment finance, car rental and fleet providers, and service providers in the finance industry. We are the voice for advancing a world-class finance industry and our members are at the forefront of innovation in consumer and business finance in Australia. Our members finance Australia's future.

We collaborate with our members, governments, regulators and customer representatives to promote competition and innovation, deliver better customer outcomes and create a resilient, inclusive and sustainable future. We provide new policy, data and insights to support our advocacy in building a more prosperous Australia.

Summary of AFIA's recommendations

¹ www.afia.asn.au.

² AGD, *Reforming Australia's anti-money laundering and counter-terrorism financing regime, Consultation Paper 5: Broader reforms to simplify, clarify and modernise the regime (May 2024)*, 13.

³ [Australian Finance Industry Association \(afia.asn.au\)](http://Australian Finance Industry Association (afia.asn.au)).

As the only peak industry body representing all of Australia's finance industry, AFIA supports the government's commitment to upholding the integrity of the Australian financial system through the creation of a comprehensive regulatory framework based on international standards developed through the recommendations of the Financial Action Task Force ('FATF').⁴

While the AGD has issued a total of five second stage consultation papers, AFIA's submission focuses on questions and issues presented in Papers 4 and 5, with our full detailed responses and recommendations provided for in Attachments A and B of this submission respectively.

AFIA acknowledges the critical importance of Australia's work on AML/CTF at both the international and domestic level, including the development of an AML/CTF framework which endeavours to counter the threats posed by ML/TF activities. As we said in our submission on the first stage of this consultation on AML/CTF reforms:⁵

AFIA condemns in the strongest possible terms any activity which in any way contributes to money-laundering or the financing of terrorism.

AFIA agrees with the Attorney-General, the Hon. Mark Dreyfus KC MP, who said in announcing these proposed reforms on 20 April 2023:⁶

No legitimate business wants to assist the laundering of money which funds serious crimes including terrorism, child abuse and the illicit drug trade.

However, as noted in the *2016 Report of the Statutory Review of the Anti-Money Laundering and Counter-Terrorism Financing Act 2006 and Associated Rules and Regulations*, the current framework is complex and difficult to navigate.⁷

Therefore, we support the objective of a simplified, modernised and clear regime which captures all the information necessary to efficiently and effectively mitigate risks.

In relation to **Paper 4**, AFIA makes the following recommendations, which are outlined in detail in **Attachment A**:

⁴ FATF, [FATF Recommendations](#).

⁵ AFIA submission on the First AML/CTF Reforms Consultation ([16 June 2023](#)).

⁶ The Hon. Mark Dreyfus KC MP (Attorney-General of Australia)(20 April 2023), [Consultation on major reform of Australia's anti-money laundering and counter-terrorism financing laws](#).

⁷ AGD, *Report of the Statutory Review of the AML/CTF Act 2006 (Cth) and Associated Rules and Regulations* ([2016](#)).

1. We recommend that further industry consultation be undertaken with those stakeholders concerned with the handling and transference of digital assets in developing a comprehensive understanding of the complex nature of digital asset value transfers in relation to AML/CTF obligations.⁸
2. Further to AFIA's position on the need for further digital asset-specific consultation, we also recommend the development of guidance materials in assisting digital asset service providers in understanding the full breadth of their AML/CTF obligations.⁹
3. AFIA notes many entities, have not previously been captured by the regime in the way that is being proposed by the new definition of 'beneficial institution'. Therefore, as this will be a new obligation systems and processes will need to be implemented requiring resourcing and planning. As such, we recommend AGD with industry, to assist in further defining the term 'beneficial institution', to provide certainty and clarity.¹⁰

In relation to Consultation **Paper 5**, AFIA makes the following recommendations, which are outlined in detail in Attachment B:

1. All the proposals requiring either legislative reform or new regulations should be subject to a separate and further detailed consultation period, calling for additional submissions on draft legislative language, to allow for detailed feedback on the specifics of the proposals.
2. Further engagement between government and industry specifically on the aspect of 'customer risk rating', to ensure reporting entities possess the requisite clarity on what a typical or standard risk rating framework may look like.¹¹
3. Further consultation be undertaken with industry stakeholders to adequately gauge what a fair and reasonable timeframe might look like for reporting entities to give a risk rating to all pre-commencement customers.¹²
4. Simplified CDD should accommodate companies and trusts in the same way as the simplified verification procedures currently provided for under the Rules.¹³

⁸ AGD, *Reforming Australia's Anti-Money Laundering and Counter-Terrorism Financing Regime Paper 4: Further Information for Digital Currency Exchange Providers (DCEPs), Remittance Service Providers and Financial Institutions* ([May 2024](#)), 10.

⁹ Ibid.

¹⁰ Ibid, 12.

¹¹ AGD, *Reforming Australia's anti-money laundering and counter-terrorism financing regime, Consultation Paper 5: Broader reforms to simplify, clarify and modernise the regime* ([May 2024](#)), 14-15 and at 17.

¹² Ibid, 23-24.

¹³ AGD, *Reforming Australia's anti-money laundering and counter-terrorism financing regime, Consultation Paper 5: Broader reforms to simplify, clarify and modernise the regime* ([May 2024](#)), 19.

5. In developing a definition of a business relationship, the concept of an 'element of duration' also be clearly defined.¹⁴
6. Pursuant to the element of duration being clearly defined, that a business relationship should be considered concluded when the element of duration no longer exists between the parties involved.¹⁵
7. That any guidance on CDD produced by AUSTRAC should be concentrated in a single, holistic document, which brings together each individual component and core CDD obligation in the order with which they must be applied by reporting entities.¹⁶
8. That entities be given scope to assign a risk rating 'prior to and/or as soon as practicable after a designated service has been offered'.
9. That any wording changes to the Act/Rules as part of these reforms still promote and allow each entity to determine its own appropriate risk-based mitigation measures and internal controls depending on its business, customers, products, and other relevant variables.
10. Any guidance produced by AUSTRAC in relation to CDD obligations also incorporate how the definitions of 'business relationship' and 'occasional transaction' would operate in the application of said obligations in providing clarity for reporting entities.¹⁷
11. Section 5 of the Act ('Definitions') and Part 1.2 of the Rules ('Key terms and concepts') should both include a breakdown of the term 'business relationship' which is comprehensive and detailed enough to provide full clarity for industry.¹⁸
12. Further guidance should be provided on what the regulatory expectations would be around the development of internal controls and process which would be required to be in place prior to the sharing of information contained within or related to a Suspicious Matter Report ('SMR').¹⁹
13. Further guidance should be provided in relation to how SMR disclosures could prejudice an investigation or potential investigation, to ensure industry is well equipped to consider such prejudices in the development of relevant internal controls and processes.²⁰

¹⁴ Ibid, 24.

¹⁵ Ibid.

¹⁶ Ibid, 25 and at 33.

¹⁷ Ibid, 18 and at 20.

¹⁸ Ibid, 24.

¹⁹ Ibid, 8-9.

²⁰ AGD, *Reforming Australia's anti-money laundering and counter-terrorism financing regime, Consultation Paper 5: Broader reforms to simplify, clarify and modernise the regime* ([May 2024](#)), 29-30 and at 35.

14. Clarification should be provided on the definition of 'fit and proper person' in providing reporting entities with the requisite clarity on which persons within a business would qualify for the Compliance Officer role.²¹
15. Guidance should be provided on how a Board's certification stating that 'the AML/CTF Compliance Officer is a fit and proper person' is provided to AUSTRAC.
16. Entities dealing with repeat low-risk level customers should be eligible to apply a simplified CDD program which recognises the need for proportionality in respect of the burden carried by the entity and the risk posed by the customer.²²
17. That the Government work with industry, in further defining the term 'beneficial institution', to provide certainty and clarity of what responsibilities beneficial institutions will have within the broader scope of the proposed value transfer concept.

CLOSING COMMENTS

AFIA welcomes further dialogue with the AGD on reforms to AML/CTF laws. Should you wish to discuss our submission or require additional information, please contact me at [redacted] or [redacted], or alternatively please contact Luke O'Donnell, AFIA Policy Adviser at [redacted] or [redacted].

Yours sincerely



Sebastian Reinehr
Policy Director

²¹ Ibid, 10.

²² Ibid, 23 and at 34.

ATTACHMENT A – AFIA’S RECOMMENDATIONS ON PAPER 4

Consultation Question F – Are there any services currently provided by financial institutions that fall outside the definition of ‘electronic funds transfer instruction’, but would be captured by the ‘value transfer’ concept?

Background and considerations

As per AUSTRAC and in accordance with the Act, an Electronic Funds Transfer Instruction (EFTI) is defined as:²³

[A]n instruction for the transfer of money controlled by a customer to another person, where:

- the transfer instruction is carried out or passed on electronically*
- the transfer is within the same financial institution or between financial institutions.*

AFIA notes this definition has been inherently limited by the core focus on ‘money’, and that the introduction of a ‘value transfer service’ concept, as outlined in Paper 4, would seek to both streamline and broaden the scope of regulatory capture to those financial institutions that handle assets which may traditionally fall outside the scope of money, such contemporary digital assets, which are not currently included within the scope of an EFTI.²⁴

Regarding those EFTI services identified under section 6, Table 1 (Items 29-32), only ‘money and property’ are targeted across the EFTI chain, which encompasses the payer, the payee, the transferor entity, and the ultimate transferee entity.

As per Paper 4, under proposed designated services 5-7, the terms ‘money’ and ‘property’ are replaced with the consolidated term, ‘value’, which on a prima facie basis would see a broader range of financial services captured under the new value transfer concept, and primarily, digital assets.²⁵

AFIA’s recommendations

²³ AUSTRAC, *Electronic Funds Transfer Instruction* ([‘EFTI’](#))

²⁴ AGD, *Reforming Australia’s Anti-Money Laundering and Counter-Terrorism Financing Regime Paper 4: Further Information for Digital Currency Exchange Providers (DCEPs), Remittance Service Providers and Financial Institutions* ([May 2024](#)), 10.

²⁵ AGD, *Reforming Australia’s Anti-Money Laundering and Counter-Terrorism Financing Regime Paper 4: Further Information for Digital Currency Exchange Providers (DCEPs), Remittance Service Providers and Financial Institutions* ([May 2024](#)), 21.

While AFIA supports the broad-spectrum capture of digital assets (including digital currency), we also acknowledge the complexity of the digital asset/financial services landscape, particularly in considering the blockchain ecosystem presents unique risk profiles within the context of AML/CTF due to a complex mix of participants, technologies and economic models.²⁶

In considering the aforementioned, we recommend that further industry consultation be undertaken with those stakeholders concerned with the handling and transference of digital assets in developing a comprehensive understanding of the complex nature of digital asset value transfers in relation to AML/CTF obligations.

Further to AFIA's position on the need for further digital asset-specific consultation, we also recommend the development of guidance materials in assisting digital asset service providers in understanding the full breadth of their AML/CTF obligations.

Consultation Question J – Do you consider that the existing exemptions for the travel rule are appropriately balanced?

Background and considerations

AFIA notes any updated concept of 'value transfer chain' which aims to define the terms 'ordering institution', 'intermediary institution' and 'beneficiary institution', might affect organisations not included in the current International Funds Transfer Instruction ('IFTI') reporting requirements.²⁷

AFIA's recommendation

AFIA notes the 'beneficial institutions' has not previously been defined as is proposed. Therefore, this new definition will impose new obligations on certain entities. This will require updates to systems and processes to adjust to any new definition of 'beneficial institution' would be a significant regulatory burden and require substantial resourcing. As such, AFIA recommends that the Government work with industry, as we would be more than willing to assist in further defining the term 'beneficial institution', to provide certainty and clarity.²⁸

ATTACHMENT B – AFIA'S RECOMMENDATIONS ON PAPER 5

²⁶ Nichols, Mark, Mark Vangeloff and Matthew McConnell, 'Token Due Diligence: A Structured Approach to Digital Asset Risk', www.ey.com ([5 March 2024](#)).

²⁷ AGD, *Reforming Australia's anti-money laundering and counter-terrorism financing regime, Consultation Paper 5: Broader reforms to simplify, clarify and modernise the regime* ([May 2024](#)), 12.

²⁸ AGD, *Reforming Australia's Anti-Money Laundering and Counter-Terrorism Financing Regime Paper 4: Further Information for Digital Currency Exchange Providers (DCEPs), Remittance Service Providers and Financial Institutions* ([May 2024](#)), 12.

Consultation Question A - Under the outlined proposal, a business group head would ensure that the AML/CTF program applies to all branches and subsidiaries. Responsibility for some obligations (such as certain CDD requirements) could also be delegated to an entity within the group where appropriate. For example, a franchisor could take responsibility for overseeing the implementation of transaction monitoring in line with a group-wide risk assessment. Would this proposal assist in alleviating some of the initial costs for smaller entities?²⁹

Background and considerations

We consider that this proposal raises some uncertainty around its application and impact on multinational businesses with stand-alone Australian entities.

Therefore, we recommend further clarification that the amended Act will not prohibit entities with this kind of business structure from engaging in the simplified approach.

AFIA also notes that further information/guidance on this particular reform proposal would be required in order to adequately gauge what, if any, cost reductions there might be for smaller businesses.

AFIA's recommendations

While AFIA supports the notion of a more streamlined business group concept in the application of group-wide risk assessments, clarity and guidance will still be required on how business groups will apply this group model in real terms.

AFIA also notes that the group-wide assessment should pay particular attention to the removal of any duplicative practices between the group and individual level, to ensure the approach is as streamlined as possible.

Consultation Question C - Many modern business groups use structures that differ from the traditional parent subsidiary company arrangement. What forms and structures of groups should be captured by the group-wide AML/CTF program framework?³⁰

Background and considerations

While AFIA acknowledges the benefits of offering a simplified business group concept which provides for greater flexibility and information sharing in respect of AML/CTF compliance obligations, AFIA notes that

²⁹ AGD, *Reforming Australia's anti-money laundering and counter-terrorism financing regime, Consultation Paper 5: Broader reforms to simplify, clarify and modernise the regime* ([May 2024](#)),12.

³⁰ AGD, *Reforming Australia's anti-money laundering and counter-terrorism financing regime, Consultation Paper 5: Broader reforms to simplify, clarify and modernise the regime* ([May 2024](#)),13.

some of our members already compliant under the Designated Business Group ('DBG') model would ideally continue operating in the same way under the new simplified business group model.³¹

AFIA's recommendations

AFIA recommends that notwithstanding the introduction of the new simplified business group model, those entities already compliant under the original DBG model be allowed to continue their compliance operations under that format.

***Consultation Question D - To what extent do the proposed core obligations clarify the AML/CTF CDD framework?*³²**

Background and considerations

While CDD presents as one of the most integral AML/CTF obligations, it is featured through the Act and Rules in a complex way.

In both the Rules and the Act, the core obligation of CDD is split between CDD procedures and identification procedures, whereas referring to customer identification as initial CDD would provide clarity to and reduce confusion for reporting entities in their interpretation of their CDD obligations under the Rules and the Act.

While 'enhanced due diligence' is already provided for under the current Rules, further clarification and definition of this term is required to assist entities with its interpretation and application.³³

In relation to customer risk rating, as noted in Paper 5, assessing the risk of ML/TF is a critical fundamental component in the application of core AMF/CTL obligations under the current Rules and Act.³⁴

As stated by AUSTRAC:³⁵

[I]dentifying and assessing the level of money laundering and terrorism financing (ML/TF) risk to your business or organisation is an important part of your AML/CTF program. It is the first thing you must do because it determines what measures you need to include in your program.

³¹ Ibid, 6 and 11.

³² Ibid, 25.

³³ AGD, *Reforming Australia's anti-money laundering and counter-terrorism financing regime, Consultation Paper 5: Broader reforms to simplify, clarify and modernise the regime* ([May 2024](#)), 21.

³⁴ Ibid, 34.

³⁵ AUSTRAC, 'Money Laundering/Terrorism Financing Risk Assessment' ([2022](#)).

Assessing the ML/TF risk your business or organisation faces enables you to develop an AML/CTF program with appropriate measures to protect your business or organisation from being exploited by criminals.

AFIA's recommendations

AFIA recommends that while the proposed outline of core CCD obligations contained in Paper 5 helps to clarify for reporting entities their obligations in this area, each component/sub-component of CDD obligations should be grouped together in the same sections of both the Act and Rules respectively, for the purposes of clarity and consistency.

We also recommend further engagement between government and industry specifically on the definition of the term 'customer risk rating'.

Greater guidance on how customer risk ratings can be documented and any particular scales or measures which may need to be utilised in the application of these ratings would be helpful.

Further industry guidance and consultation would also be needed if the goal is to introduce real-time screening and scoring, given the significant technological uplift required for the average reporting entity.

As such, we recommend a change which gives entities scope to assign a risk rating 'prior to and/or as soon as practicable after a designated service has been offered', or similar language. The benefit of adopting this approach means technologies are not restricted, entities are not limited to pre-activation screening, and risk ratings can be amended based on our continued learning about our customer behaviours prior to and following onboarding.

Guidance should also be provided on what would be considered as an acceptable identification process for all stages of CDD.³⁶

In relation to the risk-based mitigation measures and internal controls developed by reporting entities, we recommend that any wording changes to the Act/Rules as part of these reforms still allow each entity to determine its own appropriate measures and controls depending on its business, customers, products etc, in maintaining flexibility in this regard.³⁷

***Consultation Question E - What circumstances should support consideration of simplified due diligence measures?*³⁸**

³⁶ AGD, *Reforming Australia's anti-money laundering and counter-terrorism financing regime, Consultation Paper 5: Broader reforms to simplify, clarify and modernise the regime* ([May 2024](#)), 14-15.

³⁷ Ibid, 34.

³⁸ Ibid, 25.

Background and considerations

AFIA acknowledges due diligence measures are an integral component of AML/CTF obligations and we promote an approach which is proportionate to the level of risk involved.

We note that under Part 4.3.8 of the Rules, there is already a 'simplified company verification procedure' in respect to a company which is:³⁹

- a domestic listed public company
- a majority owned subsidiary of a domestic listed public company
- licensed and subject to the regulatory oversight of a Commonwealth, State or Territory statutory regulator in relation to its activities as a company

In addition, per Part 4.4.8 of the Rules, there is already a 'simplified trustee verification procedure' in respect of a trust which is:⁴⁰

- a managed investment scheme registered by ASIC
- a managed investment scheme that is not registered by ASIC and that:
 - a) only has wholesale clients; and
 - b) does not make small scale offerings to which section 1012E of the Corporations Act 2001 applies
- registered and subject to the regulatory oversight of a Commonwealth statutory regulator in relation to its activities as a trust
- a government superannuation fund established by legislation

Repeat customer who have previously been rated as low risk, and who have not previously been elevated above the standard level of CDD, should be eligible for a simplified CDD program.

In addition, and as noted by AUSTRAC, special or enhanced CDD measures will generally only apply to customers from countries or regions which are:⁴¹

- deemed a high-risk or non-cooperative jurisdiction by the Financial Action Task Force (FATF)
- prescribed foreign countries
- subject to sanctions
- known tax havens
- known to provide support to terrorist organisations.

AFIA's recommendations

³⁹ [Anti-Money Laundering and Counter-Terrorism Financing Rules Instrument 2007 \(No. 1\)](#).

⁴⁰ [Anti-Money Laundering and Counter-Terrorism Financing Rules Instrument 2007 \(No. 1\)](#).

⁴¹ AUSTRAC, 'High-Risk Countries, Regions and Groups' (2022).

Given there are already simplified procedures provided for under the Rules in respect of companies and trusts, AFIA recommends simplified CDD accommodate companies and trusts where appropriate.

AFIA recommends entities dealing with repeat low-risk level customers should be eligible to apply a simplified CDD program which recognises the need for proportionality in respect of the burden carried by the entity and the risk posed by the customer.

Further guidance is needed to assist entities in developing a greater understanding of where simplified CCD will be able to be applied.⁴²

The reformed AML/CTF regime should also consider how changes to Australia's Digital Identity Framework might be leveraged by reporting entities to comply with certain CDD obligations under the regime.⁴³

Consultation Question F - What guidance should AUSTRAC produce to assist reporting entities to meet the expectations of an outcomes-focused approach to CDD?⁴⁴

Background and considerations

In considering the underlying objective of the AGD engaging in this reform process – to streamline and clarify the current framework – AFIA would encourage the principles of streamlining and clarification to be reflected in any guidance material published to assist entities with interpretation, application, and broader AMLC/CTF compliance.

AFIA's recommendations

AFIA recommends any guidance on CDD produced by AUSTRAC should be concentrated in a single, holistic document, which brings together each individual component and core CDD obligation in the order with which they must be applied by reporting entities.

This document should also endeavour to align its language with that of the reformed regulatory framework for the purpose of consistency and should also endeavour to explain each core component and obligation in the simplest, most concise language possible.

Consultation Question H - What timeframe would be suitable for reporting entities to give a risk rating to all pre-commencement customers?⁴⁵

⁴² AGD, *Reforming Australia's anti-money laundering and counter-terrorism financing regime, Consultation Paper 5: Broader reforms to simplify, clarify and modernise the regime* ([May 2024](#)), 22.

⁴³ Department of Finance, *Changes to Australia's Digital ID System* ([May 2024](#)).

⁴⁴ AGD, *Reforming Australia's anti-money laundering and counter-terrorism financing regime, Consultation Paper 5: Broader reforms to simplify, clarify and modernise the regime* ([May 2024](#)), 25.

⁴⁵ *Ibid*, 25.

Background and considerations

AFIA notes that the size, scope, and breadth of customer base for reporting entities varies considerably between different organisations, and as such, consideration should be given to the number of pre-commencement customers situated with the largest of organisations impacted by this regulation.

AFIA's recommendations

AFIA recommends further consultation be undertaken with industry stakeholders to adequately gauge what a fair and reasonable timeframe might look like for reporting entities to give a risk rating to all pre-commencement customers.

It should also be considered that substantial discrepancies in time frames would exist between automated and manual processes relating to the identification and risk rating of all pre-commencement customers.

In addition, should pre-commencement risk ratings be required to sit within individual customer profiles, this would require lenders to make adjustments to their originations systems, further extending the timeframe for the finalisation of all ratings.

Consultation Question I - Are there situations where SMR or section 49 related information may need to be disclosed for legitimate purposes but would still be prevented by the proposed framing of the offence?⁴⁶

Background and considerations

AFIA notes that section 123 of the Act (the offence of 'tipping off'), provides that aside from limited prescribed exceptions under the same provision, it is currently prohibited under most circumstances to share any knowledge or information of a section 49 SMR to any stakeholder other than an 'AUSTRAC entrusted person'.

As alluded to in Paper 5, not only are the provisions relating to the tipping off offence (including specified exceptions) legally complex in their interpretation and application, but the tipping off offence as it is currently worded may ultimately be limiting the effectiveness of AML/CTF efforts by preventing exchanges of information between internal stakeholders which seek to prevent suspected ML/TF activity.⁴⁷

⁴⁶ AGD, *Reforming Australia's anti-money laundering and counter-terrorism financing regime, Consultation Paper 5: Broader reforms to simplify, clarify and modernise the regime* ([May 2024](#)), 30.

⁴⁷ Ibid, 25-26.

AGD should give due consideration to approaches taken to this issue in other jurisdictions, such as in the *Proceeds of Crime Act 2002* (UK).⁴⁸

For example, under section 333A of the UK Act, it is an offence for a person to disclose information that is likely to prejudice an investigation.⁴⁹

However, in the preceding sections of the UK Act (ss 333B-C), a range of exceptions to this rule are provided for in facilitating the transmission of information equivalent to that contained within an SMR to other credit or financial institutions, and particularly if the sharing of that information is done in the course of preventing suspected ML/TF activities.⁵⁰

AGD's 2023 first round consultation paper also states that it is increasingly common for regulated entities to centralise their financial crime operations in offshore subsidiaries or via third parties, which is not currently accommodated by any of the specified provisions (including exceptions) under the Act.⁵¹

Given the above, one of the most important aspects to be dealt with under the reformed tipping off offence is the various ways modern organisation's structure and operate their respective financial crime operations, to avoid the need to submit applications for disclosure exemptions which could slow the process of taking reasonable steps to counter ML/TF activity.

AFIA's recommendations

AFIA supports the detailed proposal to reform the tipping off offence as outlined in Paper 5, in enabling business groups and organisations enhanced flexibility for internal information sharing between entities.⁵²

We recommend further guidance and clarification on what the regulatory expectations would be around the development of internal controls and process which would be required to be in place prior to the sharing of information contained within or related to a SMR.

We also recommend that further guidance be provided in relation to how SMR disclosures could prejudice an investigation or potential investigation, in ensuring industry is well equipped to consider such prejudices in the development of relevant internal controls and processes.

AFIA supports repealing the *Financial Transaction Reports Act 1988* (Cth)

⁴⁸ [Proceeds of Crime Act 2002 \(UK\)](#).

⁴⁹ [Proceeds of Crime Act 2002 \(UK\)](#).

⁵⁰ [Proceeds of Crime Act 2002 \(UK\)](#).

⁵¹ AGD, 'Modernising Australia's Anti-Money Laundering and Counter-Terrorism Financing Regime Consultation Paper on Reforms to Simplify and Modernise the Regime and Address Risks in Certain Professions' ([2023](#)), 13.

⁵² *Ibid*, 11 and 26.

As outlined in Paper 5, the Department proposes to repeal the *Financial Transaction Reports Act 1988* to remove elements of duplication and avoid streamline obligations.⁵³

AFIA supports the Department's proposal to reform regulations applied to motor vehicles dealers, as outlined in Paper 5.⁵⁴

AFIA's feedback in relation to independent program reviews

Background and considerations

As discussed in Paper 5, one of the internal controls which may be specified under the Act may include a requirement for independent audit with a frequency determined by the entity's risk profile and detail around the minimum standards for auditors.⁵⁵

AFIA notes that 'independent reviews' are already detailed in AUSTRAC guidance provided on its website, which states:⁵⁶

[T]he independent reviewer must be someone who:

- *understands your business or organisation*
- *understands ML/TF risks*
- *was not involved in any part of developing the program, including assessing your money laundering/terrorism financing risk, developing controls or implementing or maintaining the program.*

The AUSTRAC guidance also states:⁵⁷

[T]he methodology you apply and the scope of your review depends on your business or organisation. You should take into account your business or organisation's money laundering/terrorism financing risk and any changes to your business or organisation and/or its risk profile since the last review.

⁵³ Ibid, 32.

⁵⁴ Ibid, 32.

⁵⁵ AGD, *Reforming Australia's anti-money laundering and counter-terrorism financing regime, Consultation Paper 5: Broader reforms to simplify, clarify and modernise the regime* ([May 2024](#)), 11.

⁵⁶ AUSTRAC, *Independent Reviews* (viewed on [10 June 2024](#)).

⁵⁷ Ibid.

With this considered, there appears to be some ambiguity around what differences, if any, there may be between the current AUSTRAC guidance and how independent audits as they are referred to in Paper 5 will be provided for under the Act.⁵⁸

AFIA's recommendations

AFIA recommends that clarity be provided on what changes, if any, there would be to requirements pertaining to independent reviews. Appropriate flexibility, as provided for under current AUSTRAC guidance, should be maintained.⁵⁹

This flexibility should also continue to extend to the specific program areas which entities decide to encompass within a review process, as certain program areas may require attention while others may not.

AFIA's recommendations

Clarity is required in respect of obligations for foreign branches and subsidiaries, AFIA recommends further guidance be provided on the following:

- Whether domestic entities also registered with foreign regulators must undertake dual reporting.
- Whether AUSTRAC compliance certificates cover the activities of domestic entities both in Australia and the foreign jurisdictions within which they also operate.
- How domestic entities should proceed in situations where there are competing elements in both domestic and foreign AML/CTF regulatory frameworks.

AFIA's feedback in relation to a proposed definition of 'unusual transactions or behaviour'

Background and considerations

Paper 5 states that the Department proposes the Act would be amended to define 'unusual transactions or behaviour' as those that have no apparent economic or lawful purpose or are inconsistent with what the reporting entity knows about the customer, the nature and purpose of the business relationship, the customer risk or business profile, and, where relevant, the source of funds.⁶⁰

⁵⁸ AGD, *Reforming Australia's anti-money laundering and counter-terrorism financing regime, Consultation Paper 5: Broader reforms to simplify, clarify and modernise the regime* ([May 2024](#)), 11

⁵⁹ Ibid.

⁶⁰ AGD, *Reforming Australia's anti-money laundering and counter-terrorism financing regime, Consultation Paper 5: Broader reforms to simplify, clarify and modernise the regime* ([May 2024](#)), 19-20

While AFIA acknowledges the value of providing clarity to industry on what constitutes unusual transactions or behaviour within an AML/CTF regulatory context, reporting entities will require a degree of flexibility so that the definition is able to accommodate contextual elements of how an individual entity operates and how it engages with its customers.

AFIA's recommendation

AFIA recommends that the Department should develop a definition of 'unusual transactions or behaviour', that this definition be flexible enough to accommodate the various ways in which reporting entities engage with their customers to ensure that individual circumstances are always able to be considered.⁶¹

AFIA's feedback in relation to the Compliance Officer's role

AFIA's recommendations

AFIA recommends that clarification should be provided on the definition of 'fit and proper person' in providing reporting entities with the requisite clarity on which persons within a business would qualify for the Compliance Officer role.⁶²

This should also extend to oversight measures needing to be applied to the Compliance Officer role, and how, in practical terms, the board's certification stating that 'the AML/CTF Compliance Officer is a fit and proper person' is provided to AUSTRAC.

AFIA's feedback on integrating technological developments into AML/CTF processes

AFIA strongly supports the embrace of technology that delivers stronger risk assessment processes. We encourage a commitment to innovation supported by regulatory frameworks which facilitate improvements through technological developments.⁶³

⁶¹ AGD, *Reforming Australia's anti-money laundering and counter-terrorism financing regime, Consultation Paper 5: Broader reforms to simplify, clarify and modernise the regime* ([May 2024](#)).

⁶² Ibid, 10.

⁶³ Ibid 3 and 8.

Technology-enhanced risk management is an ongoing activity through the customer life cycle from the moment a potential customer begins entering personal details during onboarding processes, through to their use of products and platforms and even in the conclusion of business relationships.⁶⁴

In particular, machine learning tools allow businesses to support dynamic and continual risk evaluations which lead to stronger compliance outcomes and more positive customer experiences.⁶⁵

⁶⁴ Ibid.

⁶⁵ Ibid.