

08 September 2017

Tim Watling
Committee Secretary
Legal and Constitutional Affairs Legislation Committee
Department of the Senate
PO Box 6100
Parliament House
Canberra ACT 2600
By email legcon.sen@aph.gov.au

Dear Mr Watling

Inquiry into the Anti-Money Laundering and Counter-Terrorism Financing Amendment Bill 2017

The Australian Bankers' Association (**ABA**) appreciates the opportunity to provide the Legal and Constitutional Affairs Legislation Committee (**the Committee**) with our comments on the *Inquiry into the Anti-Money Laundering and Counter-Terrorism Financing Amendment Bill 2017 (the inquiry)*.

With the active participation of its members, the ABA provides analysis, advice and advocacy for the banking industry and contributes to the development of public policy on banking and other financial services. The ABA works with government, regulators and other stakeholders to improve public awareness and understanding of the industry's contribution to the economy and to ensure Australia's banking customers continue to benefit from a stable, competitive and accessible banking industry.

General comments

The ABA continues to support the Australian Transaction Reports and Analysis Centre (**AUSTRAC**) and the Attorney-General's Department (**AGD**) as they address the necessary reforms identified in the Financial Action Task Force's *Anti-money laundering and counter-terrorist financing measures, Australia, Mutual Evaluation Report 2015*.

The ABA also continues to work with both AUSTRAC and the AGD to progress the implementation of the 84 recommendations identified in the 2016 report resulting from the AGD *Statutory review of the Anti-Money Laundering and Counter-Terrorism Financing Act 2006 and Associated Rules and Regulations*.

The ABA notes and appreciates the significant efforts of both AUSTRAC and the AGD in progressing the above reforms. In regards to the Anti-Money Laundering and Counter-Terrorism Financing Amendment Bill 2017 (**the Bill**), our comments are:

Part 1 - Objects of Act - Serious Financial Crimes

The scope of the Act should be to detect, deter and disrupt money laundering, the financing of terrorism, and other serious financial crimes, but should not be more broadly applied to the deterrence of all "serious crimes". The ABA is unclear as to the reasons why the legislation is to be broadened beyond "serious financial crimes", as the regulatory need to justify such a large expansion has not been made. The Bill, as it stands will generate new and substantial regulatory costs for all of AUSTRAC's reporting entities (**REs**), not just banks, regardless of size.



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The ABA therefore recommends that all references to “serious crimes” be altered to read “serious financial crimes” and be applied consistently throughout the Bill.

Currently, monitoring by REs is based on defined predicate offences. The expansion of this Act beyond serious financial crimes would have a significant impact on how the AML/CTF regime will operate in Australia. The Bill, as it stands, may result in all REs having to expand their transaction monitoring scenarios, and in some instances, their entire platforms will need to be updated, modified and re-aligned to look for all other types of serious crimes that are currently not monitored.

Depending on the breadth of this expanded scope of “serious crimes” the proposed change will require a significant increase in transaction monitoring scenarios thus generating a substantial regulatory burden on all REs. The ABA asks the Committee to examine how this expansion beyond serious financial crimes would alter current practice for all of AUSTRAC’s REs and to examine the costs and benefits of this proposed reform. For example, if all serious crimes are to be caught under the legislation as a result of this amendment, would this mean that all REs, regardless of size would need to develop a detailed understanding of all serious crimes across Australia? If so, in addition to generating a new and substantial regulatory cost burden, an increased transition time would be needed for all of AUSTRAC’s regulated population.

Part 6 - Revision of definitions - 78 Section 5 (definition of signatory)

The proposed definition of a signatory has the potential to increase uncertainty. The ABA would welcome clarity as to what scenarios (and parties) are intended to be captured under the revised definition of a “signatory”. Such guidance should form part of the Explanatory Memorandum and subsequent AUSTRAC guidance.

Should you have any questions regarding the content of this submission, the ABA is happy to assist. We look forward to the continued dialogue with both the AGD and AUSTRAC to progress these reforms to the AML/CTF regime.

Yours sincerely

Signed by

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Executive Director, Industry Policy (Acting)