

CONSTITUTIONAL AFFAIRS REFERENCES COMMITTEE

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

Questions on Notice: A combined response from Chartered Accountants Australia and New Zealand (CA ANZ), CPA Australia and the Institute of Public Accountants (IPA).

Question 1: To provide additional information in respect of what your members are actually seeing (in terms of cost) in New Zealand. Further, to comment on evidence of costs provided by previous witnesses.

As highlighted by previous witnesses, such as AML Experts, the cost to comply with an AML/CTF regime falls into two broad categories. Firstly, the cost to develop and implement an AML/CTF program, secondly, the ongoing costs to ensure continued compliance.

To the first, in New Zealand our members lacked clarity as to what the relevant supervisor would deem to be a compliant AML/CTF program. To mitigate the risk of non-compliance, many sought legal advice to develop a program and this resulted in many outsourcing their client due diligence (CDD) element.

As provided by Ms Stylianou at the hearing, for members in the United Kingdom who opt to subscribe to software to undertake due diligence in house, the cost of the software is around GBP 260 (approx. AU\$500) per annum plus the time of an employee to undertake each check. In Australia, our members in mid-sized financial advice firms already captured under the AML/CTF regime have typically found the need to engage an additional employee solely to monitor ongoing compliance by all staff to their AML/CTF program and complete reports for AUSTRAC.

In New Zealand, CDD had to be undertaken for existing clients as well as new clients and renewed each year. As provided by Ms Waller at the hearing, the ongoing costs of outsourcing just the CDD element for our New Zealand members can be anywhere from NZ\$50 up to NZ\$500 per client, depending on the structure of the client. Considering the average charge for completing an e-tax return in Australia is approximately AU\$250, to pass on an additional expense of just AU\$50 for external CDD to clients, would see the cost of this service increase by 20%.

While we are unable to comment on the accuracy of figures used in the costs analysis provided by AML Experts to the Committee, we do consider that it appropriately outlines the various elements within the two categories of AML/CTF compliance costs, implementation and ongoing. However, it is unclear if the estimates provided include the chargeable hours for an employee's time to undertake each activity.

To compare the estimates provided by both parties, the AML Experts figures per client need to be extrapolated to annual figures using the number of clients for the practice. In our experience, a small accounting practice would have around 2,000 clients on average. So, for example, looking just at

CDD, applying a midway figure of AU\$75 from AML Experts estimates, a small practice servicing 2,000 clients could have an additional AU\$150,000 in operational costs each year for this single activity.

Fundamentally, these estimates indicate that the implementation and ongoing costs will depend specifically on the requirements for the practice under the regime, the size of the practice (including both number of clients to perform CDD on and number of employees to train) and the proportion/volume of more complex transactions undertaken. What will ultimately determine the cost for new participants in the regime will be the data AUSTRAC determines as useful to detect criminal activity and how new participants can provide that data to AUSTRAC.

Accordingly, we welcome comments by the Department of Home Affairs (the Department) that the first step in implementing Tranche II is to simplify the system. This will ensure only effective obligations are retained for the benefit of both current and potential participants. We also welcome the Department's process in developing the cost-benefit analysis of potential participants to include a stocktake of professional obligations and existing regulatory obligations. We support the Department's intent to leverage existing obligations to achieve reporting of high-value actionable intelligence without the need for a great regulatory import.

Question 2 - You raised the issue of overlaps and duplications; we had some evidence about that today, with the tranche 2 requirements and current professional standards. Can I ask you to take on notice anything that you think, in addition, you want to alert the committee to? Where are the aspects of tranche 2, to the very best of your knowledge, already covered in Australian law? If there is anything further you need to add to what you've already put on the record, I would appreciate having that.

Introduction

The accounting profession is already heavily regulated through legislation; government registration requirements (including auditors, tax practitioners, insolvency practitioners, financial service providers); professional and ethical standards; admission/education standards; continuing professional development requirements; a professional standards scheme (PSS); and self-regulation mechanisms.

In addition, there have been numerous reforms which seek to address the economic harm caused by criminal activity, and which intersects the work of accountants. These are outlined below.

The following requirements potentially overlap or duplicate aspects of tranche 2 of the AML-CTF legislation.

Legislation and regulation

- *Corporations Act 2001* – requires compliance with Accounting Standards (section 334) and Auditing Standards (section 336) and sets out registration requirements for registered company auditors, insolvency practitioners, and Australian Financial Services Licence holders.

- *Tax Agents Services Act 2009* – sets out registration requirements for registered tax agents including compliance with the Code of Professional Conduct (section 30-10) which includes requirements of honesty and integrity; independence; confidentiality; competence; and other responsibilities including not knowingly obstructing the proper administration of taxation laws.
- New standards are being introduced by the ATO and Tax Practitioners Board with the primary objective of strengthening and modernising the practices and controls that registered tax agents must follow when verifying the identity of their clients. The proof of identity checks will apply to all new and existing clients, and their representatives.
- Guidelines for applying the standards are currently under consultation. However, practitioners are encouraged to adopt the new standards for any new clients or for suspicious circumstances pertaining to existing clients.
- Another measure is the introduction of director identification numbers, which will require existing and new directors to personally apply for a unique identifier. Existing directors have until 30 November 2022 to obtain an identification number.

Professional and ethical standards

CPA Australia, CA ANZ and IPA are members of the International Federation of Accountants (IFAC). IFAC sets Statements of Membership Obligations (SMO) that member bodies are required to comply with and report against.

IFAC SMO 1 *Quality Assurance* and SMO 4 *International Ethics Standards Board for Accountants (IESBA) Code of Ethics for Professional Accountants* and the respective constitutional documents of the three bodies require compliance with professional and ethical standards.

In Australia, the Accounting Professional and Ethical Standards Board sets professional and ethical standards with which members of CPA Australia, CA ANZ and IPA must comply. These requirements include:

- APES 110 *Code of Ethics for Professional Accountants* (The Code)– comprehensive set of ethical requirements (211 pages) based on the fundamental principles of integrity; objectivity; professional competence and due care; confidentiality; and professional behaviour. The Code requires accountants, whether in business/commerce or in practice, to respond to actual or potential non-compliance with laws and regulations by reporting the matter to the relevant public authority. The Code also covers: fees and other types of remuneration; inducements (including gifts and hospitality); custody of client assets; and expansive independence requirements
- APES 205 *Conformity with Accounting Standards* – requires accountants to comply with accounting standards when preparing, presenting, auditing, reviewing or compiling financial statements. APES 205 builds on the legislative requirements of the *Corporations Act 2001*.
- APES 210 *Conformity with Auditing and Assurance Standards* – requires auditors to observe and comply with their public interest obligations; act with independence, professional competence and due care and comply with auditing and assurance standards when they undertake an audit/assurance engagement. APES 210 builds on the legislative requirements of the *Corporations Act 2001*.

- APES 220 *Taxation Services* – requires accountants to adhere to the APES 110 fundamental responsibilities when performing a taxation service. This includes protective mechanisms relating to associations with tax schemes and arrangements; the use of estimates; false and misleading information; client monies and professional fees. APES 220 complements the legislative requirements of the *Tax Agents Services Act 2009*.
- APES 310 *Client Monies* – sets strict requirements for how accountants handle client monies, including through a practitioner's trust account or in situations where an accountant has been provided with responsibility to operate a client bank account. Compliance is subject to annual external audit with strict notification periods set for serious non-compliances. APES 310 builds on the legislative expectations of the *Tax Agents Services Act 2009* and APES 110 Code of Ethics for Professional Accountants. APES 310 specifically deals with AML-CTF:

4.11 A Member in Public Practice shall not: (a) receive or pay into a Trust Account or a Client Bank Account; or (b) disburse out of a Trust Account or a Client Bank Account, any Monies if the Member believes, on reasonable grounds, that they were obtained from, or are to be used for, illegal activities or that dealing with the Monies is otherwise unlawful.

4.12 When Dealing with Client Monies, a Member in Public Practice shall not be involved in any money laundering transactions or in the utilisation of the proceeds of crime or terrorist financing.

4.13 Where a Member in Public Practice encounters or becomes aware of instances of non-compliance or suspected non-compliance with laws and regulations (NOCLAR) when Dealing with Client Monies, the Member shall comply with Section 360 Responding to Non-Compliance with Laws and Regulations of the Code.

- APES 320 *Quality Control for Firms* requires practitioners to maintain a system of quality control designed to provide it with reasonable assurance of compliance with legal and regulatory requirements. This includes relevant ethical requirements; acceptance and continuance of client relationships and specific engagements (including client identity verification and due diligence requirements such as considering the integrity of potential and existing clients); engagement performance; and monitoring.
- APES 325 *Risk Management for Firms* requires practitioners to maintain an effective risk management framework to meet its overarching public interest obligations as well as its business objectives by facilitating business continuity, enabling quality and ethical professional services to be provided to clients and protecting the reputation and credibility of the practice. This includes policies and procedures to address a range of risks relating to: governance; business continuity; business; financial; regulatory; technology; human resources; and stakeholders.

Admission/education standards

Constitution documents of CPA Australia, CA ANZ and IPA set minimum entry requirements for various tiers of membership in order to meet IFAC membership obligations under SMO 2

International Education Standards for Professional Accountants and Other Pronouncements Issued by the International Accounting Education Standards Board (IAESB).

Continuing Professional Development (CPD) requirements

Constitution documents of CPA Australia, CA ANZ and IPA set stringent CPD requirements for our members which are designed to ensure that education standards are developed and updated on a continuous basis; and to support the professional competence elements of APES 110.

Professional Standards Scheme (PSS)

CPA Australia, CA ANZ and IPA are all participants in a PSS, pursuant to professional standards legislation. The objectives of the legislation are to: protect consumers; improve professional standards; and help associations. There are extensive mandatory requirements to ensure compliance with the Scheme and legislation, including lodgement of an annual Professional Standards Improvement Program.

Self-regulation mechanisms

Quality Review Programs

To ensure our members comply with their legislative, and professional obligations, they are subject to a Quality Review Program. Non-compliance is reinforced through our respective disciplinary processes.

Complaints and professional discipline

Complaints against our members are investigated and treated in accordance with SMO 6 *Investigations and Discipline* obligations and in accordance with our respective constitutional documents. Our members are also subject to investigation and disciplinary processes by any of the regulators, including ASIC, Tax Practitioners Board and the Companies Auditors Disciplinary Board.

Question 3 – What kind of whistle-blower protections do you want for your members?

We believe that the whistle-blower protections for members of the accounting profession should be the same as those under Part 9.4AAA of the Corporations Act for any company employees, officers, suppliers or service providers (paid or unpaid) (s.1317AAA).

Whilst it is possible that professional accountants may be covered by these existing protections, for the avoidance of any doubt, a breach of AML/CTF legislation could be added to s.1317AA (5)(c).

Further, currently only ASIC and APRA are prescribed by legislation as regulators to whom an individual can provide information / make their disclosure to and trigger whistle-blower protections. To address this and ensure adequate protections are in place, AUSTRAC could be added to the s.1317AA(1)(b), either via regulations or preferably in the primary legislation.

We would also recommend reviewing if further regulatory authorities should be added, such as the Australian Competition and Consumer Commission.