

Further Submission to the Commonwealth Parliamentary Joint Committee on Law Enforcement

Inquiry into the Capability of Law Enforcement to Respond to Money Laundering and Financial Crime

Introduction

The Victorian Legal Services Board and Commissioner (VLSB+C) thanks the Parliamentary Joint Committee on Law Enforcement (**the Committee**) for the opportunity to make a further submission to the *Inquiry into the Capability of Law Enforcement to Respond to Money Laundering and Financial Crime* (**the Inquiry**).

As the independent regulator of the legal profession in Victoria, we have a keen interest in ensuring that lawyers do not knowingly or unwittingly facilitate money laundering or terrorism financing. For that reason, we previously made a submission to the Inquiry dated 26 July 2024 ([Attachment](#)). That submission covered the risk of trust account misuse, proposed changes to the tipping off offence in the *Anti-Money Laundering and Counter-Terrorism Financing Act 2006* (Cth) (**AML/CTF Act**), and information sharing arrangements between law enforcement agencies.

This additional submission addresses the Inquiry's amended Terms of Reference D and E. It highlights barriers to information sharing (and, where information is shared, barriers to its subsequent use) as a key challenge to our ability to respond to lawyer misconduct, including involvement in money laundering and financial crime.

Our role as the legal regulator in Victoria

The Victorian Legal Services Board (**the Board**) and the Victorian Legal Services Commissioner (**the Commissioner**) are the independent statutory authorities responsible for regulating the legal profession in Victoria in accordance with the *Legal Profession Uniform Law*.¹ The two authorities operate as one body, the VLSB+C.

The Board's regulatory functions include making decisions about lawyers' practising certificates, overseeing law practices' trust accounts and external interventions into law practices, and applying for the removal of lawyers' names from the Supreme Court roll where necessary.

The Commissioner is responsible for receiving, managing and resolving complaints about the conduct of lawyers, which can extend to a lawyer's conduct outside of legal practice. The Commissioner has investigative and prosecutorial powers, and investigations can result in a variety of disciplinary actions.

Terms of Reference D: the effectiveness of collaboration, coordination and information sharing between Commonwealth agencies with authorities in other jurisdictions and the private sector

In our previous submission we highlighted the importance of information sharing to our ability to detect and investigate potential lawyer misconduct.

For context, concerns about a lawyer's conduct are typically raised with us by clients. However, there are other clients who are unaware of (or benefit from) their lawyers' misconduct. In these circumstances, we might detect such misconduct ourselves (e.g. through a trust account investigation) but we also rely on other sources of information and intelligence – including from other law enforcement agencies.

¹ As set out in Schedule 1 to the *Legal Profession Uniform Law Application Act 2014* (Vic).

An important source of that information is from federal law enforcement and regulatory agencies, which can acquire intelligence relevant to our regulatory role that we would otherwise not detect (unless it was disclosed to us by a lawyer themselves). For example, lawyers may be involved in tax compliance issues which bring them to the attention of the Australian Taxation Office (**ATO**) or be investigated by the Australian Securities & Investments Commission (**ASIC**) for a breach of directors' duties.

It is also important that we can access information from federal agencies when we detect concerns about a lawyer's conduct while undertaking our statutory functions. For example, we may form suspicions that a lawyer is involved in money laundering or (less likely) terrorism financing during a trust account investigation or compliance audit. In these circumstances, it would be helpful to be able to approach agencies such as AUSTRAC, to enquire whether the agency can share information that provides further context. Without that context, we may be unable to establish, or act on, potential misconduct by the lawyer or their law practice.

However, there are challenges both receiving and using Commonwealth information for our purposes. In our experience, effective information sharing between law enforcement agencies rarely occurs in the absence of formalised information sharing arrangements. This is an issue in both the Federal and state context. To address this, we have proactively sought to establish information sharing arrangements (e.g. a memorandum of understanding) with other law enforcement entities, for example Victoria Police. We are keen to establish such arrangements with Commonwealth law enforcement and regulatory agencies such as the Australian Federal Police and Criminal Assets Confiscation Taskforce, ATO, Tax Practitioners Board, Australian Criminal Intelligence Commission, and ASIC. We are also currently in discussions with AUSTRAC about joining the Fintel Alliance, to support future collaboration and partnership between our two agencies.

There is also a need to consider how information sharing can be supported by legislative reform. We have encountered legislative barriers to federal agencies sharing information with us (e.g. secrecy provisions in Commonwealth legislation). Even if legislative provisions allow information to be shared, they can restrict our ability to on-disclose that information, preventing us from acting on the information. For example:

- the Uniform Law requires us to disclose certain information to lawyers we investigate.²
- Some of our decisions are also subject to review,³ in which case we will be required to provide any 'relevant documents' to the Victorian Civil and Administrative Tribunal.⁴
- In some circumstances, we may need to share intelligence with legal profession regulators in other jurisdictions,⁵ to respond to cross-jurisdictional misconduct.

Restrictions on on-use and on-disclosure can therefore result in the unfortunate situation where we consider – based on information we have been provided by a federal agency – that a Victorian lawyer is not a fit and proper person to practise law, but we cannot take any action in relation to their practising certificate, because we cannot disclose the information we have received. For example, we have received information from ASIC about a lawyer's misconduct⁶ but, because the legislation restricts on-disclosure, we could not take any regulatory action based on that information. On a practical level, the absence of a clear legislative regime for information sharing may also leave a Commonwealth agency reluctant to comment or engage with us when we make enquiries seeking contextual information, as discussed above.

² See section 319 of the Uniform Law.

³ See section 314 of the Uniform Law, which provides the right of review at the designated Tribunal. Section 10 of the *Legal Profession Uniform Law Application Act 2014* (Vic) designates VCAT as the designated Tribunal.

⁴ Section 49 of the Victorian Civil and Administrative Tribunal Act 1998 (Vic).

⁵ As allowed by section 441 of the Uniform Law.

⁶ Under section 127(4)(d)(i) of the *Australian Securities and Investments Commission Act 2001* (Cth).

We note the Commonwealth Government conducted a review of Commonwealth secrecy provisions in 2023, following concerns raised by several preceding reviews about the number, inconsistency, appropriateness and complexity of Commonwealth secrecy provisions, and has made recommendations for reform.

We recognise that restrictions on information sharing are important in protecting the integrity of various agencies' criminal prosecutions and regulatory actions. However, there is also a clear public benefit in VLSB+C being able to receive and use information from Commonwealth agencies to exercise our regulatory powers. We should also be empowered to on-disclose information to lawyers and other persons/bodies where necessary.

Terms of Reference E: the role and response of businesses and other private sector organisations, including their level of awareness, assistance to law enforcement, and initiatives to counter this crime

In our previous submission, we noted that we have encountered authorised deposit-taking institutions (ADIs) failing to report irregularities in law practice trust accounts to us, as required by section 154 of the Uniform Law. Those ADIs advised us they were concerned that making those reports could breach the tipping off offence in section 123 of the AML/CTF Act (as it was then formulated).⁷

The 2024 amendments now reframe the tipping off offence to focus on preventing disclosure where it would, or could reasonably be expected to, prejudice an investigation.⁸ Disclosures to Australian law enforcement, regulatory or oversight agencies, and to comply with requirements in federal, state or territory laws, will generally not be considered to breach the tipping off offence.⁹ We welcome these amendments and consider that, in conjunction with the general guidance on AUSTRAC's [website](https://www.austrac.gov.au), they will provide greater clarity to ADIs about their legislative obligation to provide information to us.

However, to put the matter beyond doubt, we have asked AUSTRAC to consider updating the existing guidance to explicitly state that ADIs reporting law practice trust account irregularities to us does not constitute tipping off, so long as there are appropriate controls in place to ensure disclosing such information will not prejudice an investigation. We also consider that examples of 'appropriate controls' to ensure disclosing information to regulators will not prejudice an investigation, and therefore not trigger the tipping off offence, would be helpful.

Conclusion

We thank the Committee once again for the opportunity to further contribute to this inquiry. [REDACTED] would be pleased to discuss any aspect of this submission in further detail, or provide additional information if required. [REDACTED] can be contacted by email at [REDACTED] or by telephone [REDACTED]

Yours faithfully,

[REDACTED]

Fiona McLeay
Board CEO & Commissioner

Attachment: Submission - 2024-07-26 – VLSB+C - Joint Committee on Law Enforcement - Inquiry into Money Laundering and Financial Crime

⁷ *Anti-Money Laundering and Counter-Terrorism Financing Act 2006* (Cth) s 123, later amended by *Anti-Money Laundering and Counter-Terrorism Financing Amendment Bill 2024* (Cth) sch 5 item 2.

⁸ *Anti-Money Laundering and Counter-Terrorism Financing Amendment Bill 2024* (Cth) sch 5 item 2.

⁹ Explanatory Memorandum, *Anti-Money Laundering and Counter-Terrorism Financing Amendment Bill 2024* (Cth) 101 [474].