Law Council
OF AUSTRALIA

Review of the Anti-Money Laundering and Counter-Terrorism Financing Amendment Bill 2026

Parliamentary Joint Committee on Intelligence and Security

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Contents

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Executive summary

Preliminary comments

Commencement

1. The Law Council has serious concerns regarding the ability of Tranche 2 reporting entities to comply with the new legislative regime by 1 July 2026.

2. We are firmly of the view that commencement of the legislation should be delayed until 1 July 2027. If this cannot be done, we recommend that:

    - consideration be given to delaying commencement of, and/or temporarily modifying the application of, certain specific aspects of the *Anti-Money Laundering and Counter-Terrorism Financing Act 2006* (Cth); and/or
    - the Australian Transaction Reports and Analysis Centre implement a transitional compliance period of at least 24 months following July 2026, during which it will focus on education and assistance for Tranche 2 entities in complying with their new obligations, rather than on pursuing compliance through enforcement.

Other recommended amendments.

3. The Law Council is of the view that serious consideration needs to be given to making other important amendments to the *Anti-Money Laundering and Counter-Terrorism Financing Amendment Act 2024* (Cth) as a matter of urgency. In particular, we submit that the legislation needs to be amended to clarify the scope of application of the Professional Services in Table 6, Section 6(6B).

Views on the proposed power in Schedule 1

4. The Law Council does not support the introduction of a power to restrict or prohibit a reporting entity from using a product, service, delivery channel or thing to provide a designated service.

5. We are concerned that the power is neither risk-based, proportionate, nor demonstrably necessary, and we do not think the safeguards on use of the power are adequate. Our concerns are especially acute given that the power could be exercisable in relation to the Professional Services in Table 6, section 6(6B)—meaning that they could conceivably be used to limit or prohibit the provision of legal services, raising potential constitutional concerns.

Views on amending the definition of 'financing of terrorism' in Schedule 2

6. The Law Council does not support amending the definition of '*financing of terrorism'* in section 5 of the AML/CTF Act to reflect recent amendments to the *Criminal Code 1995* (Cth) effectuated by the *Criminal Code Amendment (State Sponsors of Terrorism) Act 2025* (Cth).

7. The current legislative framework does not, in our view, extend obligations generally to state-sponsored terrorism (with the exception of the suspicious matter reporting obligation, which can be triggered in relation to any offence against a law of the Commonwealth or of a State or Territory). As such, amending the definition will extend the scope of the legislative regime's obligations, because reporting entities will need to have regard to the broader scope of the term '*financing of terrorism'* when fulfilling their AML/CTF obligations.

8. Thus, amending the definition will introduce additional, and significant, uncertainty and complexity to the legislative regime less than two months before its commencement. This is especially concerning given the broadly framed, uncertain scope of the new state-sponsored terrorism offences, which will create practical difficulties for reporting entities in understanding the scope of, and attempting to operationalise, their obligations under the legislation.

Views on the Schedule 3 amendments

Part 1—Customer due diligence

9. In relation to Items 1 and 5 of Part 1 of Schedule 3, the Law Council supports the amendments, which we note accord with the recommendations of the Financial Action Task Force.

10. In relation to Item 3 of Part 1, the Law Council does not support the amendment.

Part 7—Miscellaneous

11. In relation to Item 67, the Law Council queries why sections 26G(1) and (2) are being included within the definition of '*infringement notice provision'* in section 184(4) when other civil penalty provisions that are not currently infringement notice provisions are not being included.

Introduction

12. The Law Council of Australia welcomes the opportunity to provide this submission to the Parliamentary Joint Committee on Intelligence and Security (the **Committee**) in relation to its review into the *Anti-Money Laundering and Counter-Terrorism Financing Amendment Bill 2026* (Cth).

13. This submission first makes preliminary comments on this bill, then provides the Law Council's views on specific aspects of it.

14. For ease of reference, in this submission the Law Council refers to:

- the *Anti-Money Laundering and Counter-Terrorism Financing Act 2006* (Cth) and the *Anti-Money Laundering and Counter-Terrorism Financing Amendment Act 2024* (Cth) as an integrated whole (**AML/CTF Act**);
- the *Anti-Money Laundering and Counter-Terrorism Financing Amendment Bill 2026* as the **Bill**;
- to the Anti-Money Laundering and Counter Terrorism Financing legislative regime as the **Regime**;
- to the Australian Transaction Reports and Analysis Centre as **AUSTRAC**; and
- to the Department of Home Affairs as the **Department**.

Background

15. In mid-December 2025, the Department of Home Affairs (**Department**) commenced consultation on two proposals relevant to the AML/CTF Act (**Consultation**). Two proposals were consulted on, the first of which concerned the introduction of a new power in the AML/CTF Act to enable the AUSTRAC Chief Executive Officer to restrict or prohibit certain high-risk products, services, or delivery channels in prescribed circumstances, and the second of which concerned changing the definition of '*financing of terrorism'* in the AML/CTF Act.

16. The Law Council provided a detailed submission in response to the Consultation in January 2026 (the **January Submission**), which is available here. The Law Council's submission expressed opposition to both proposals.

17. The Bill was introduced on 12 March 2026, comprising the following three schedules:

- Schedule 1—Regulating use of high-risk mechanisms;
- Schedule 2—Meaning of financing of terrorism; and
- Schedule 3—Technical amendments.

18. Schedules 1 and 2 largely mirror the Consultations proposals. The Consultation did not address the amendments in Schedule 3.

Preliminary comments

Commencement of the Act

19. We wish to take this opportunity to express our serious concern that many Tranche 2 reporting entities will not be able to comply with the new legislative Regime by its commencement on 1 July 2026.

20. As we have raised with AUSTRAC and the Department several times in the past year, several of the essential steps reporting entities need to complete to be able to comply by 1 July still cannot be completed. To be in a position to comply, potentially regulated Tranche 2 entities must:

    - first, be aware that they may be regulated by the Regime;
    - second, be able to work out whether they will be regulated by it, which requires that they are able to determine whether they provide 'designated services';
    - third, if they do or will provide designated services, learn about the Regime, the obligations it imposes, and what is required to comply with it; and
    - fourth, determine how they will implement their obligations, which requires, at a minimum, that they:
        - design a comprehensive compliance framework;
        - hire new staff and/or upskill existing staff (or themselves) to acquit specific obligations (both of which will require the investment of time and resources to engage in recruitment and/or necessary training);
        - investigate and potentially implement external compliance solutions; potentially reorganise their business operations;
        - come up with the money needed to pay necessary costs.

21. Alarmingly, less than two months from commencement, we continue to receive reports from our constituent bodies that some of those who may or will be regulated by the Regime are unaware, or have only very recently become aware, that they may be subject to it. Those who are aware of the Regime do not have much of a head start in their compliance preparation journey: significant challenges remain in attempting to work out the scope of application of the Professional Service designated services, the content of the Regime's core requirements, and what needs to be done in practical terms to comply with the Regime's obligations.

22. We are of the view that this is largely attributable to the lack of time afforded to both the regulator, AUSTRAC, and the regulated population to prepare for compliance: the *Anti-Money Laundering and Counter-Terrorism Financing Amendment Act 2024* (Cth) received Royal Assent on 10 December 2024, and its provisions (mostly) commence on either 31 March 2026 or 1 July 2026.[1]

23. While AUSTRAC and other regulatory agencies (including the Office of the Australian Information Commissioner) and government departments have been working hard to try to ensure that the legislative framework is complete and capable of

[1] *Anti-Money Laundering and Counter-Terrorism Financing Amendment Act 2024* (Cth), s 2 (**AML/CTF Act**).

operationalisation by 1 July, it was unrealistic and unfair to expect that this could be achieved, especially considering:

- the sweeping, systemic nature of the reforms introduced by the AML/CTF Act which radically changed existing obligations for Tranche 1 reporting entities and which introduced an entirely new regulatory framework for Tranche 2 entities, who have never previously been subject to the AML/CTF Act;
- that the AML/CTF Act largely comprises 'outcomes-focused requirements'[2] that specify objectives reporting entities are required to achieve without prescribing *how* they are to be achieved, but which are so vague and/or broad that their operationalisation depends upon the creation of prescriptive rules in delegated legislation;
- that important aspects of the framework, including legal professional privilege guidelines and class exemption rules, were intentionally left to delegated legislation to be later crafted—for example, the LPP guidance and form;
- that the legislature explicitly intended AUSTRAC to develop '… *comprehensive guidance, with examples, on how a reporting entity can implement the obligations'*,[3][4] and on the meaning of terms used within the legislation[5] prior to commencement to support reporting entities; and
- that the population of reporting entities is anticipated to '*increase from approximately 17,000 by approximately 90,000 entities*', meaning that the population regulated by AUSTRAC (and presumably, its workload) would more than sextuple.[6]

Ambiguity in the legislative drafting

24. A critical factor that has limited the ability of Tranche 2 entities to prepare to comply is the extent of the ambiguity in some of the new provisions extending the scope of application of the AML/CTF Act—particularly those in Table 6 of section 6(6B). The ambiguous drafting of some of these Items has made it very difficult, if not impossible, for Tranche 2 entities to work out whether the Regime will apply to them with reference to the legislation (and accompanying materials) alone.

25. For example, consider Item 1 of Table 6—Professional services. This Item is defined in the Table as:

> *assisting a person in the planning or execution of a transaction, or otherwise acting for or on behalf of a person in a transaction, to sell, buy or otherwise transfer real estate, where:*
>
> *(a) the service is provided in the course of carrying on a business; and*
>
> *(b) the sale, purchase or other transfer is not pursuant to, or resulting from, an order of a court or tribunal*

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[2] Explanatory Memorandum, Anti-Money Laundering and Counter-Terrorism Financing Amendment Bill 2024 (Cth) [8], [10], [27], [204].
[3] See, e.g., Explanatory Memorandum, Anti-Money Laundering and Counter-Terrorism Financing Amendment Bill 2024 (Cth) [171].
[4] Ibid, [241].
[5] Ibid, [879], in relation to the definition of the word 'account' in section 5: '*The expectation is that AUSTRAC will develop guidance on the interpretation of 'account' to explain what types of account are intended to be captured, while also making it clear that the list is non-exhaustive*.'
[6] Ibid, [10].

26. No clarification is provided as to the intended meaning of several key operative elements of this Item that are acutely relevant to its scope of application, including (but not limited to) '*assisting'*, '*carrying on a business'*, '*otherwise acting for or on behalf of a person'*, '*otherwise transfer*'. ('Real estate' is defined in section 5.)

27. While a limited explanation (five paragraphs) of the general intended scope of application of this Item is provided in the Act's Explanatory Memorandum,[7] much of the commentary simply repeats or restates the text of the legislation and/or provides circular descriptions of the Item without meaningfully elucidating the intended meaning of the Item's key terms.

28. For example, paragraph 358 simply states:

> *Item 1 of table 6 creates a new designated service of assisting a person in the planning or execution of a transaction, or otherwise acting for a person for or on behalf of a person in a transaction to:*
> - *sell 'real estate'*
> - *buy 'real estate', or*
> - *transfer 'real estate' (other than a transfer pursuant to, or resulting from, an order of a court or tribunal) in the course of carrying on a business.*

29. Immediately after, the opening three sentences of paragraph 359 state:

> *Item 1 of table 6 is intended to regulate where a professional service provider is engaged to assist a person to plan or execute a transaction, or otherwise act for a person in a transaction to sell buy or transfer 'real estate'. Part 1 of this Schedule inserts a definition of 'real estate' in section 5 of the AML/CTF Act. This designated service will occur when a lawyer or conveyancer undertakes work required to give effect to the transfer of ownership of 'real estate' from one person to another.*

30. While the rest of paragraph 359 does helpfully clarify a few circumstances in which the court order carve-out would apply to exclude certain services from the scope of this Item, the remaining three paragraphs of the section of the Explanatory Memorandum relevant to this Item (being paragraphs 360–362) are given over to explaining that the Item regulates '*planning steps'* associated with a transaction, but only when related to an actual transaction—though confusingly, no explanation is provided about what constitutes an '*actual'* transaction.

31. Nowhere is any explanation given about the intended scope of meaning of the term '*assisting'* in these paragraphs, or in the following section of the Explanatory Memorandum dealing with the similarly framed Item 2. This is of grave concern, because varying interpretations of the term could lead to very different views about the scope of application of the Item. Notably, for example, if interpreted broadly, it could capture any service provided to a person that relates, however remotely, to a transaction to transfer real estate, such as the services provided by notaries and mediators in addition to the services of conveyancers and lawyers.

32. Because such limited clarification is provided on the scope of application of this Item by the Act and the Explanatory Memorandum, it has not been possible for many potentially regulated Tranche 2 entities to work out if this Item captures the services

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

they provide with reference to the Act (and its supporting materials) alone. This is a critical failing: to be able to work out if they are regulated by the Act, reporting entities (or potential reporting entities) need to be able to understand its scope of application.

33. While AUSTRAC has published Reforms Guidance that describes its interpretation of the scope of application of the Items in Table 6, this regulatory guidance was only made available in December 2025—leaving many potentially regulated Tranche 2 entities with only six months to work out if they are regulated, if they were fortunate enough to have their questions resolved by it. Those whose questions have not been addressed Reforms Guidance are in the invidious position of waiting for updates to the Reforms Guidance expected to be made available by AUSTRAC at the end of May 2026, hoping that they will be addressed therein. In the interim, legal practitioners and the Law Council's Constituent Bodies continue to reach out to the Law Council with questions about the Regime's scope of application that have not yet been, and may not be, answered before 1 July 2026.

34. It is obviously unacceptable that many potentially regulated Tranche 2 entities remain unsure about whether they will be regulated or not this close to commencement.

The role of regulatory guidance

35. More importantly, however, it is unacceptable that many potentially regulated Tranche 2 entities cannot work out whether the Regime will apply to them or not without reference to the Reforms Guidance, as the scope of application of several of the Items in Table 6 simply cannot be ascertained without recourse to it.

36. Regulatory guidance is not, and cannot be, a substitute for legislative provisions; as explained by the Joint Committee on Statutory Instruments of the United Kingdoms' Parliament (**Joint Committee**) in its 2021 report, 'Rule of Law Themes from COVID-19 Regulations',[8] *'[t]he rule of law requires a clear distinction to be made between non-statutory guidance and requirements imposed by law*'.[9]

37. Regulatory guidance exists to *guide* by, for example, providing information and education to a regulated population on how the regulator interprets the law and the principles underlying its approach, by providing practical guidance on implementing statutory obligations, and by seeking to influence sectoral behaviour.[10] It cannot be used to '*tighten up wording that is insufficiently clear in the legislation itself*', or to '*fill gaps in the law*': the rule of law requires that '*the law … be sufficiently clear and certain on its face to enable the individuals to whom it applies to be able to comply with it*'.[11]

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[8] House of Lords and House of Commons, Joint Committee on Statutory Instruments, '*Rule of Law Themes from COVID-19 Regulations* (First Special Report of Session 2021–22, 21 July 2021) <https://committees.parliament.uk/publications/6952/documents/72746/default/> ('Joint Committee Report').

[9] Ibid, 14 [45].

[10] See, e.g., ASIC, *Regulatory Resources* (Website, 1 May 2026) < https://www.asic.gov.au/regulatory-resources/find-a-document/regulatory-guides/>; Joint Committee Report, 14 [47].

[11] Joint Committee Report, 15 [48]-[50].

38. While speaking in relation to the United Kingdom, the comments of the Joint Committee are equally applicable in this context owing to the substantially similar requirements of relevant aspects of the rule of law doctrine.[12]

39. In stating this we do not intend to criticise AUSTRAC with whom we have been working collaboratively. AUSTRAC has been trying to do the best it can with extremely difficult material. Nevertheless, we consider that the Reforms Guidance has had to go beyond simply explaining how AUSTRAC interprets the law, and that it steps in to tighten up unclear wording in the AML/CTF Act and fill gaps in the law. Notably, it provides explanations of the meaning of key operative terms that are ambiguous in the Items of Table 6 that appear to have no grounding in the Act or the Explanatory Memorandum and introduces novel principles that define the scope of meaning of the Items and which '*determine who is regulated and when regulatory obligations are triggered*'.

40. For example, under the heading '*Assisting or otherwise acting for or on behalf of a person when providing the professional services covered by items 1–4 and 6*', the Reforms Guidance explains:[13]

> *'Assisting', 'planning', 'organising' or 'otherwise acting for on behalf of a person' will only be regulated under table 6 when it's sufficiently linked to the outcome of the designated service …*
>
> *To be sufficiently linked to the outcome of the relevant designated service, the following principles must be met.* ***These principles determine who is regulated and when regulatory obligations are triggered****.*
>
> - ***who****: a person whose assistance to a customer directly advances a relevant transaction or a creation or restructure of a body corporate or a legal arrangement. Merely influencing how the customer proceeds, providing general advice or ancillary services isn't sufficient.*
> - ***when****: a person starts to provide one of the designated services when they act on instructions in relation to a relevant transaction or the creation or restructure of a body corporate or a legal arrangement. This will typically be when two or more parties to a transaction exist or when preparatory steps are taken to create or restructure a corporate body or legal arrangement.*
>
> *These principles ensure that the scope of regulation is confined to:*
>
> - *professional services that generate money laundering, terrorism financing and proliferation financing risks …*
> - *the ML/TF risks that table 6 aims to address (for example, a conveyancer engaged to transfer real property), not ancillary services that may merely*

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[12] See, e.g., LexisNexis, Halsbury's Laws of Australia (online at 2 May 2026) B Rule of Law; Minister For Home Affairs v Benbrika [2021] HCA 4; The Hon Justice Michelle Gordon, *The Rule of Law – What We Share and Must Defend* (Australian High Commission, Malaysia, 8 March 2018); John Braithwaite, *Rules and Principles: A Theory of Legal Certainty* (2002) 27 AJLP 47; *Rainforest Reserves Australia Inc v Minister for the Environment and Water* (2025) 311 FCR 98.

[13] AUSTRAC, *Professional designated services* (Webpage, 31 March 2026) <https://www.austrac.gov.au/new-austrac/designated-services-newly-regulated-entities/professional-designated-services>.

influence them (for example, a solicitor engaged to provide the conveyancer with advice on the legal effect of terms in a contract for sale)
- *preparatory steps to provide services in relation to an outcome, but not outcomes that are merely hypothetical or remote.*

41. Another important example is found in AUSTRAC's guidance on the meaning of the term '*carrying on a business'* for the purposes of the designated services in Table 6, section 6B of the AML/CTF Act. AUSTRAC's Reforms Guidance under the heading '*Provided in the course of carrying on a business (all items)*' provides that '[*a] business is a venture or concern in trade or commerce, whether or not conducted on a regular, repetitive or continuous basis*'.[14] The basis for this guidance is not clear. The term is not defined in the AML/CTF Act nor is it explained in any of the Explanatory Memoranda to the *Anti-Money Laundering and Counter-Terrorism Financing Amendment Act 2024* (Cth).[15]

42. The term is used in other Australian legislation, some of which specifically define the term,[16] and some of which do not. Case law provides some guidance on the interpretation of the term in other legislative contexts, and importantly, its construction.[17]

43. As explained by the High Court in *Hope v Bathurst City Council,*[18] the term '*carrying on a business*' means an activity with '*a significant commercial purpose or character'*—though this does not mean that '*a commercial activity cannot be described as a business if it is small in scale'*. Further, the term '*carrying on'* is construed to require some repetition of actions, and the '*activities [must] have something of a permanent character*'.[19]

44. The legal principles relevant to the construction of the term '*carrying on a business'* have been articulated in several recent cases, which helpfully explain how to work out whether '*a particular activity constitutes a business*'.[20] Ultimately, whether an activity is a '*business'* is a question of fact and degree to be determined with reference to established indicia, which include:

    - nature of the activities;
    - whether the activities have the purpose of profit-making, even if profit is small or the activity is making a loss;

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[14] AUSTRAC, *Professional designated services* (Webpage, 31 March 2026) https://www.austrac.gov.au/new-austrac/designated-services-newly-regulated-entities/professional-designated-services;

[15] The Explanatory Memorandum, Anti-Money Laundering and Counter-Terrorism Financing Amendment Bill 2024 (Cth), the Addendum to explanatory memorandum, Anti-Money Laundering and Counter-Terrorism Financing Amendment Bill 2024 (Cth), and the Supplementary explanatory memorandum to the Anti-Money Laundering and Counter-Terrorism Financing Amendment Bill 2024 (Cth).

[16] For e.g., the *Corporations Act 2001* (Cth), s 18.

[17] See, e.g., *Town Investments Ltd v Department of the Environment* [1978] AC 359

[18] (1980) 144 CLR 1.

[19] Ibid, see also *Australian Securities and Investments Commission v Cycclone Magnetic Engines Inc & Ors* (2009) 224 FLR 50.

[20] See, e.g., *Condon v Commissioner of Taxation* [2023] FCA 56 [272]-[276]; *Woods v DCT* (1999) 43 ATR 491 [35]; *Construction, Forestry, Maritime, Mining and Energy Union v Personnel Contracting Pty Ltd* (2022) 96 ALJR 89.

- whether there is some repetition of acts and have 'something of a permanent character—in other words, whether they are engaged in on a continuous, repetitive basis;
- whether the activities are carried out in a 'business like manner';
- whether ordinary commercial principles were applied to the conduct of the activities;
- the scale and volume of the activities (including the amount of capital employed).

45. AUSTRAC's interpretation does not appear to be consistent with this authority on the interpretation of the term '*carrying on a business'*, in addition to being without a clear basis in the AML/CTF Act or its supplementary materials.

46. Clearly, the legislation itself must define the scope of application of the Regime with sufficient specificity to allow the regulated population to ascertain whether they are subject to the framework or not: this vital task cannot be left to regulatory guidance, which may or may not accord with relevant case law.

47. As expressed in paragraph 30 of our January Submission, we are of the view that the AML/CTF needs to be urgently amended to clarify the scope of application of the Items in Table 6. Specifically, we have recommended that precise definitions of the meaning of the Items in Table 6 should be provided in the Act. We would welcome the opportunity to provide detailed feedback regarding our views as to what the relevant definitions should be, but at a minimum, they should accord with—and not exceed—the recommendations of the Financial Action Task Force.

Outstanding unsettled elements of the Regime

48. Our concerns regarding the ability of Tranche 2 entities to prepare to comply are compounded by the fact that aspects of the Regime still remain unsettled. Notably, Legal Professional Privilege Guidelines that will regulate how assertions of client legal privilege may be made in the context of the Regime are yet to be finalised, and several important exemptions from the scope of application of the Regime remain to be dealt with. In addition, further guidance as to important aspects of the Table 6 services are not expected until the end of May 2026.

Recommendation

49. We are firmly of the view that the commencement of the legislation needs to be delayed until 1 July 2027 to give reporting entities, including legal practices, the time they need to properly consider and implement the changes required to meet their compliance obligations without the threat of sanction, which we have repeatedly communicated to AUSTRAC and the Department over the past year.

50. In the alternative, we have recommended that:

- the commencement of certain provisions of the AML/CTF Act (detailed in Annexure A of our January Submission) should be delayed and/or temporarily modified; and/or
- AUSTRAC should implement a transitional compliance period of at least 24 months following July 2026, during which it will focus on education and

assistance for Tranche 2 entities in complying with their new obligations, rather than pursuing compliance through enforcement.

51. We remain very concerned about the prospect of reporting entities being expected to be compliant with the Regime on pain of punishment without having been given a reasonable opportunity to understand it or how to comply with it, or to undertake any steps needed to prepare their practice for compliance.

Financial impact

52. We note that the Explanatory Memorandum to the Bill states that the amendments in the Bill have no financial impact.[21]

53. We do not agree: the Bill will, if passed, certainly have a financial impact on reporting entities who have already prepared or updated their AML/CTF programs based upon the content of the existing law, as it will require reporting entities who already have an AML/CTF program to make changes to their program and internal compliance processes to comply with the amendments.

[21] Explanatory Memorandum, Anti-Money Laundering and Counter-Terrorism Financing Amendment Bill 2024 (Cth), [30].

Views on Schedule 1—Regulating use of high-risk mechanisms

Overview of the amendments

54. Schedule 1 to the Bill will, if passed, introduce a framework into the AML/CTF Act through which the AUSTRAC Chief Executive Officer may restrict or prohibit a reporting entity from using a product, service, delivery channel or thing to provide a designated service, by inserting new *Part 6B—Regulating use of high-risk products and services etc* into the AML/CTF Act.

55. The scope of the power contained within this Part largely corresponds with that outlined in the Consultation, subject to the caveat that the Consultation presented two alternative options of the scope of the power: either that the power be limited to 'registerable' designated services (i.e., those that require registration to be provided, being remittance services and virtual asset services), or that it be available in relation to all of the designated services.

Law Council view

56. As outlined in paragraphs 32 to 44 of our January submission, the Law Council does not support the introduction of a power to restrict or prohibit a reporting entity from using a product, service, delivery channel or thing to provide a designated service—regardless of whether it is limited to registerable designated services or not.

57. We do not consider the power to be risk-based, proportionate, or demonstrably necessary, and we cannot support it unless and until these basic criteria are satisfied.

58. In particular, we note that no definition or detailed explanation is provided about what high-risk products, services, or delivery channels are, and that the only example provided—at least that we are aware of—are crypto ATMs.[22] This makes it difficult to imagine what the power is intended be exercised in relation to, or whether existing powers in the AML/CTF Act (or elsewhere) are sufficient to appropriately regulate them—both of which prevent a meaningful assessment of whether they are necessary and proportional to any risk. However, given that their exercise could result in the wholesale prohibition or limitation of the provision of an undefined range of products, services, and delivery channels, and considering the extensive risk mitigation and management framework created by the AML/CTF Act, which should be sufficient to manage conceivable risks, it seems unlikely that they are risk-based and proportionate.

59. Our concerns are heightened given that the power would be exercisable in relation to all designated services, including the Professional Services in Table 6, section 6(6B).

60. Any need for the power is especially dubious in the context of the Table 6 Professional Services—we are not aware of any, and cannot conceive of any, products, services, or delivery channels that enable legal services to be provided that—in their own right—pose money laundering, financing of terrorism or proliferation risk that cannot be adequately managed and mitigated through the

[22] Explanatory Memorandum, Anti-Money Laundering and Counter-Terrorism Financing Amendment Bill 2024 (Cth), page 2.

AML/CTF Act's framework and lawyers' professional and ethical obligations, without recourse to the proposed powers.

61. More concerningly, introducing the power with this scope would confer upon AUSTRAC's Chief Executive the power to prohibit or limit the provision of legal services, possibly including legal advice and representation.

62. It is essential to the rule of law that legal professionals can provide their clients with full and frank advice about their legal affairs, and to provide them with legal services responsive to their needs—subject, of course, to the limits imposed by their professional and ethical obligations, which prohibit legal professionals from furthering illegal purposes. Any curtailment of a lawyer's capacity to provide comprehensive, appropriate advice and/or representation to a client would represent a significant and unwarranted intrusion into the relationship between lawyers and clients that should not be contemplated in the absence of compelling justification and, in any event, may be unconstitutional.

63. As explained in *APLA Limited v Legal Services Commissioner* (NSW) (**APLA**):[23]

> *The rule of law is one of the assumptions upon which the Constitution is based. It is an assumption upon which the Constitution depends for its efficacy. Chapter III of the Constitution, which confers and denies judicial power, in accordance with its express terms and its necessary implications, gives practical effect to that assumption. The effective exercise of judicial power, and the maintenance of the rule of law, depend upon the providing of professional legal services so that citizens may know their rights and obligations, and have the capacity to invoke judicial power.*

64. The regulations relevant to the High Court's decision in APLA are clearly distinguishable from the amendments proposed by Schedule 1; critically, unlike the APLA regulations, the proposed power could be exercised to restrain or inhibit the provision of legal services. Relevant obiter in the judgement of Gleeson CJ and Heydon J (who formed part of the majority) suggests that laws or regulations that impede communications between lawyers and their clients and/or which restrain or inhibit the provision of legal services may be incompatible with the rule of law, and thus incompatible with a system of representative and responsible government established by the Constitution.[24]

Safeguards

65. We also have concerns regarding the inadequacy of the safeguards on the use of the power, as outlined in paragraphs 48 to 50 of our January Submission in relation to the consultation requirement and paragraphs 45 to 47 in relation to the decision-making criteria.

66. We reiterate that, in relation to the consultation requirement:

- the minimum consultation period should be longer than 30 days, as the gravity of the power and the significant implications of its exercise means that more

[23] [2005] HCA 44 [30].
[24] Ibid, [34].

time will be needed to ensure meaningful consultation can occur with affected stakeholders; a period of 60–90 days would be more appropriate;
- there should be a prescribed minimum notice period for proposed changes to take effect.
- there should not be an 'urgency' exception that would allow the requirement to consult to be dispensed with in circumstances where a decision needs to be made urgently; adequate consultation may be especially important in such circumstances to ensure the exercise of the power is appropriately confined and that unintended consequences are avoided.

67. In relation to the decision-making criteria, we reiterate our view that the power should only be exercisable in the following circumstances:

- the service, product or delivery channel must pose a serious systemic risk of ML/TF that cannot be mitigated by any less restrictive means (including improved regulation); and
- any proposed limitation or restriction of a service, product, or delivery channel should not cause harm to businesses, consumers, the economy, and society more broadly that is disproportionate to the ML/TF risks posed.

68. In addition to the above, we reiterate our view that the power, if introduced, should be subject to the following additional safeguards:[25]

- that each legislative instrument made under it be accompanied by an explanatory statement, as defined in section 15J of the Legislation Act , which satisfies the requirements of section 15J(2) of the Act and which requires justification for the decision to be provided, and an explanation of how criteria shaping the exercise of the power were considered (including detailed statements as to how any subjective assessments or factors were considered and weighed);
- that the power is only exercisable in exceptional circumstances where there is clear evidence of systemic and risk that cannot be mitigated, associated with a specific product, service, or delivery channel;
- that the decision-making criteria that must be taken into account before the instrument is made are clearly specified;
- that the consideration of any subjective factors, such as whether it is in 'the public interest' to restrict or prohibit a product, service, or delivery channel, be guided by clear criteria;
- that it specifies that decisions made pursuant to an exercise of the power are not retrospective in application;
- that it includes a requirement to consult (subject to the above recommendations); and
- that it includes a mechanism for appeal or review of decisions.

[25] Law Council of Australia, Submission to the Department of Home Affairs, *Proposed 2026 amendments to the AML/CTF Act* (27 January 2026) [52]-[54].

Schedule 2—Meaning of financing of terrorism

Overview of the amendments

69. Schedule 2 to the Bill includes four Items that would:

- amend the definition of 'financing of terrorism' in section 5 of the AML/CTF Act to refer to new offences introduced into the *Criminal Code Act 1995* (Cth) by the *Criminal Code Amendment (State Sponsors of Terrorism) Act 2025* (Cth), being section 112.5 and Division 113; and
- provide regulation-making powers to prescribe offences against the *Charter of the United Nations Act 1945* (Cth) or against regulations made under that Act, and the *Autonomous Sanctions Act 2011* (Cth) or its regulations;
- make consequential amendments to section 41(1)(g) and (h).

70. Items 1, 2, and 3 of Schedule 2 will amend the definition of '*financing of terrorism'* in section 5 of the AML/CTF Act, such that it will provide:

> ***financing of terrorism*** *means conduct that amounts to:*
>
> *(a) an offence against section 102.6 ~~or Division 103~~ , Division 103, section 112.5 or Division 113 of the Criminal Code; or*
>
> *(b) an offence against section 20 or 21 of the Charter of the United Nations Act 1945; or*
>
> *(ba) an offence against the Charter of the United Nations Act 1945, or regulations made under that Act, that is prescribed by regulations made under this Act for the purposes of this paragraph; or*
>
> *(bb) an offence against the Autonomous Sanctions Act 2011, or a contravention of regulations made under that Act, that is prescribed by regulations made under this Act for the purposes of this paragraph; or*
>
> *(c) an offence against a law of a State or Territory that corresponds to an offence referred to in ~~paragraph (a) or (b);~~ paragraph (a), (b), (ba) or (bb); or*
>
> *(d) an offence against a law of a foreign country or a part of a foreign country that corresponds to an offence referred to in paragraph (a) or (b).*

71. Item 4 proposes to amend section 41(1)(g) and (h) to reflect the changes to the definition of financing of terrorism made by items 1–3. Specifically, it would amend these sub-sections to refer to the new paragraphs (ba) and (bb) of the definition, such that they read:

> *(1) A suspicious matter reporting obligation arises for a reporting entity in relation to a person (the first person) if, at a particular time (the relevant time):*
>
> *…*
>
> *(g) at the relevant time or a later time, the reporting entity suspects on reasonable grounds that the provision, or prospective provision, of the service is preparatory to the commission of an offence covered by paragraph (a), (b), (ba), (bb), or (c) of the definition of financing of terrorism in section 5;*

> *(h) at the relevant time or a later time, the reporting entity suspects on reasonable grounds that information that the reporting entity has concerning the provision, or prospective provision, of the service may be relevant to the investigation of, or prosecution of a person for, an offence covered by paragraph (a), (b), (ba), (bb), or (c) of the definition of financing of terrorism in section 5;*

72. These amendments appear to match the proposal contained in the Consultation Paper.

Law Council view

73. We do not support the amendments proposed by Items 1, 2, and 3 of Schedule 2, for the reasons outlined in paragraphs 62–74 of our January Submission.

74. We oppose the proposed amendments to the definition of financing of terrorism because we are of the view that it will have the effect of extending the scope of the Regime's obligations in relation to offences that are unclearly framed and potentially very broad in scope, which risks introducing additional, significant uncertainty and complexity to the Regime only a matter of weeks before its commencement. We are concerned that insufficient consideration has been given to the impact of expanding the definition of the term by government.

Extends the scope of the Regime's obligations

75. We are concerned that amending the definition of 'financing of terrorism' to refer to the new offences will have the effect of extending the scope of the Regime's obligations.

76. As far as we are aware, the existing Regime does not extend AML/CTF obligations to state-sponsored terrorism specifically, except in relation to the SMR obligation. Even then, while reporting entities are required to report suspicions of state-sponsored terrorism financing under section 41(f)(1)(iii), this obligation extends to any information that 'may be relevant to investigation of, or prosecution of a person for, an offence against a law of the Commonwealth or of a State or Territory'—meaning that this section only extends AML/CTF obligations to state-sponsored terrorism in respect of this particular offence for the purposes of suspicious matter reporting, which it also does so in relation to all other crimes).

77. We are not aware of other provisions of the AML/CTF Act that currently require reporting entities to have regard to state-sponsored terrorism in acquitting their broader ML/TF obligations.

78. Amending the definition to refer to the new offences will have the effect of extending the scope of the Regime's obligations. Among other things, it will mean that reporting entities will need to have regard to the new definition of the term—and importantly, its broadened scope—when fulfilling their obligations under the AML/CTF Act, including, for example, when assessing their ML/TF risk, when crafting their compliance programs, and when conducting client due diligence.

79. For example, it will impact each reporting entity's AML/CTF program, which comprises the entity's ML/TF risk assessment and AML/CTF policies (section 26B).

80. Section 26C requires reporting entities to undertake an ML/TF assessment that identifies and assesses the risks of money laundering, financing of terrorism, and proliferation financing that it may reasonably face in providing its designated services. If the definition of 'financing of terrorism' is expanded to include the state-sponsored terrorism offences, in conducting this assessment, reporting entities will need to consider whether they may risk encountering terrorism financing activities in providing designated services with reference to a broader range of potential activity.

81. The same is true in relation to a reporting entity's AML/CTF policies. Section 26F requires reporting entities to develop and maintain AML/CTF policies, procedures, systems and controls that appropriately manage and mitigate the risks of money laundering, financing of terrorism and proliferation financing that the reporting entity may reasonably face in providing its designated services, among other things. If the definition of 'financing of terrorism' is expanded to include the state-sponsored terrorism offences, reporting entities will need to consider whether they need to develop and maintain policies to manage and mitigate the risk of terrorism financing with reference to a broader range of potential activity.

82. This risks introducing additional, and significant, uncertainty and complexity to the Regime.

Unclear and broadly framed scope of new offences

83. The risk of introducing additional uncertainty and complexity to the Regime is heightened by the nature of the state-sponsored terrorism offences.

84. Though broadly analogous to the listing framework for non-state terrorist organisations in Divisions 102 and 103 of the Criminal Code, the new offences in Part 5.3A of the Criminal Code that address the financing of state sponsored terrorism are comparatively broadly framed and uncertain.

85. These offences have an exceedingly broad potential scope of operation; notably, a person may be guilty of an offence under section 111.4(1) or (2) if they possess a 'thing', where that 'thing' is connected with preparation for, the engagement of an entity in, or assistance in a state terrorist act', if they know or are reckless as to whether the connection exists (among other elements). Under section 111.5(1) or (2), a person will commit an offence by collecting or making a document that is connected with preparation for, the engagement of an entity in, or assistance with a state terrorist act, where they know or are reckless to the connection (again, in addition to other fault elements). No clarification is provided about what it means for a document or a thing to be 'connected with preparation for' a state terrorist act.

86. In purely practical terms, it will be very difficult for reporting entities to comply with their AML/CTF obligations if the term 'financing of terrorism' is defined with reference to such broadly framed offences: it is not clear how a reporting entity could possibly know whether a client may be being reckless as to whether a thing they possess is connected to the preparation of, engagement of an entity in, or assistance in, a state terrorist act.

87. We are also concerned that, unlike the pre-existing terrorism offences, the new state-sponsored terrorism offences involve a direct connection to a foreign nation state (i.e., the Islamic Republic of Iran). Expanding the definition to refer to these offences could have an unintended negative impact on Iranian people, and especially on diaspora communities and those who deal with people linked to Iran as reporting entities may decide that they are simply unable to deal with anyone from Iran, regardless of their particular circumstances, because they are unable to understand the scope of the new offences and thus their obligations under the Regime.

88. Introducing these additional, broadly framed and unclear offences into the definition is also of concern because financing of terrorism suspicions must be provided to AUSTRAC within 24 hours, heightening consequences of inadvertent noncompliance and imposing additional strain.

89. Because of the concerns expressed above in relation to the offences proposed to be added to extended definition of 'financing of terrorism', we are concerned that the proposed amendments will add significant complexity and uncertainty to these already complicated obligations that must be implemented in a matter of weeks.

Schedule 3—Technical amendments

90. As mentioned in paragraph 18, the amendments in Schedule 3 were not previously consulted on. We provide the following comments in relation to Items 1, 3, and 5 of Part 1, and Item 67 of Part 7.

Part 1—Customer due diligence

Item 1

91. We note that Item 1 would amend section 28(2)(e) so that it no longer requires reporting entities to check whether '*any person acting on behalf of the customer is a politically exposed person*'.

92. We support this amendment, which accords with the recommendations of the Financial Action Task Force.

Item 3

93. We note that Item 3 would amend section 30(2)(c)(i) to substitute the existing words 'the reporting entity has doubts about' with 'there are reasonable grounds for the reporting entity to doubt'. The effect of this would be as follows:

> *(2) Without limiting subsection (1), if the reporting entity provides its designated services at or through a permanent establishment of the reporting entity in Australia, the reporting entity must:*
>
> *…*
>
> *(c) if the reporting entity has a business relationship with a customer—review and, where appropriate, update and reverify KYC information relating to the customer at a frequency appropriate to the ML/TF risk of the customer, and if either of the following occur:*
>
> *(i) ~~the reporting entity has doubts about~~ there are reasonable grounds for the reporting entity to doubt the adequacy or veracity of the KYC information relating to the customer'*

94. We do not support this amendment: we think that section 30(1)(c)(i) should remain as is, such that it requires reporting entities who have a business relationship with a customer to review and, where appropriate, update and reverify know your client (**KYC**) information about the customer if the reporting entity has doubts about the adequacy or veracity of the information.

95. We are concerned that changing this to incorporate an objective element rather than a subjective knowledge element will unfairly expose reporting entities to sanction in circumstances where they have no way of knowing that objectively reasonable grounds exist that would—if known—lead it to doubt the adequacy or veracity of KYC information. This is of particular concern given the nature of the sanction: section 30(1) is a civil penalty provision, non-compliance with which may have serious financial consequences of up to a $30 million penalty, per event), and the only defence available is that the organisation took reasonable precautions and exercised due diligence (section 236).

96. For example, a person with a bank account could change the name by which they are known, and/or their gender, but not notify the bank. In such circumstances, there would be objectively reasonable grounds for the bank to doubt the correctness of some of the KYC information held by the bank, but it would have no way of knowing that such grounds existed (unless the client informed them). It would be unreasonable to subject the bank to sanction in such circumstances.

97. We are also concerned that the steps a reporting entity would need to take to become aware of everything which might give rise to reasonable grounds to doubt the adequacy or veracity of KYC information relating to a customer could effectively require the reporting entity to engage in such a level of surveillance and invasion of their privacy rights that the client's human rights would be engaged with in a way that is neither reasonable, necessary nor proportionate, and which is not dealt with in the Bill's Statement of Compatibility. The cost would be extremely high and disproportionate to any benefit, and the implications for privacy protection are significant and adverse.

Item 5

98. We note that Item 5 would amend section 32(c) as follows:

> *In complying with the obligation imposed on a reporting entity under subsection 28(1) or 30(1) in relation to a customer, the reporting entity must apply enhanced customer due diligence measures appropriate to the ML/TF risk of the customer if one or more of the following apply to the customer …*
>
> *(c) the customer, any beneficial owner of the customer, any person on whose behalf the customer is receiving the designated service, ~~or any person acting on behalf of the customer,~~ is a foreign politically exposed person;*

99. For the reasons expressed in relation to Item 1, we support this amendment.

Part 7—Miscellaneous

Item 67

100. We note that Item 67 proposes to insert '*subsection 26G(1) or (2) (which deal with complying with AML/CTF policies)*' into section 184(4), which itself operates to (partly) define '*infringement notice provision'*. These sub-sections do not appear to be currently included within the definition of '*infringement notice provision'*, and so the effect of this amendment will be to expand the scope of the infringement notice provisions.

101. The decision to include these provisions within the definition of '*infringement notice provision'* is not meaningfully explained in the Bill's Explanatory Memorandum: it simply states that the amendment '…*will ensure that subsection 26G(1) or (2), which deals with a requirement for reporting entities to comply with AML/CTF policies, is included under the definition of a 'designated infringement notice provision'*.[26]

[26] EM [173].

102. We do not necessarily object to this amendment, but query why these specific provisions are being included within the definition when other civil penalty provisions that are not currently infringement notice provisions are not, including:

- section 26E(1) '*Reporting entities must have up-to-date ML/TF risk assessment before providing designated services'*;
- section 26F(8), '*A reporting entity must not commence to provide a designated service to a customer if the reporting entity does not comply with subsection 1'*, which requires that '*A reporting entity must develop and maintain policies, procedures, systems and controls* …',
- section 26H, which relates to the responsibilities of governing bodies of reporting entities; and
- section 26J(2), which provides that the person appointed as a reporting entity's compliance officer must have certain qualities.

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