FSC FINANCIAL SERVICES COUNCIL

26 October 2018

Consultation on exposure draft: Anti-Money Laundering and Counter-Terrorism Financing Amendment Bill 2018

The Financial Services Council (**FSC**) is a leading peak body which sets mandatory standards and develops policy for more than 100 member companies in Australia's largest industry sector, financial services. Our full members represent Australia's retail and wholesale funds management businesses, superannuation funds, life insurers, financial advisory networks and licensed trustee companies. Our supporting members represent the professional services firms such as ICT, consulting, accounting, legal, recruitment, actuarial and research houses.

The financial services industry is responsible for investing almost $3 trillion on behalf of more than 14.8 million Australians. The pool of funds under management is larger than Australia's GDP and the capitalisation of the Australian Securities Exchange and is the fourth largest pool of managed funds in the world.

We appreciate the opportunity to make a submission in relation to the **Anti-Money Laundering and Counter-Terrorism Financing Amendment Bill 2018** which we received from you on 15 October 2018 and associated Rules which we received from you on 22 October 2018 in the form of Exposures Drafts (collectively referred to as the **Bill**). We have consulted with members to provide feedback on these proposed changes.

This letter sets out the FSC's submissions in relation to the Bill. All references to sections and parts in this submission are to sections and parts of the **Anti-Money Laundering and Counter-Terrorism Financing Act 2006** (**Act**) as amended by the Bill unless otherwise stated. Similarly, all references to rules are to **Anti-Money Laundering and Counter-Terrorism Financing Rules (Rules)** as

amended by the Bill. Our comments are directed to relevant amendments to the Act and Rules which will most impact the FSC's members

It is noted that in the absence of an explanatory memorandum positioning the proposed changes, it has been challenging to interpret the proposed intent of these changes. Further consultation and potentially a workshop with government representatives would be beneficial to work through the proposed intent of the changes, discussing industry feedback and understanding limitations that may exist within the regulatory environment.

Given the limited time available, initial feedback has been provided at a high level and additional time is requested to be provide more detailed feedback (preferably after the potential workshop suggested above).

FSC members have identified the following concerns with the proposed amendments:

Removal of S38 Licensed Financial Adviser arrangements

The proposed new S37A, S37B and replacement of S38 appear to remove existing S38 provisions, set out in Part 7.2 of the Rules, enabling Applicable Customer Identification Procedure (**ACIP**) to be carried out by a Licensed financial advisor to be deemed to have been carried out by another reporting entity (in specified circumstances).

These provisions are widely used across the wealth management industry to enable a standard ACIP procedure to be carried out and avoid duplication across 25,000+ financial planners, when referring clients to different product issuers.

It is not clear whether the proposed new S37A and S37B are intended to introduce new deeming provisions for foreign jurisdictions (given the reference to the laws of a foreign country as per 7.1.2 of the amended Rules), and the existing deeming provisions for Licensed Financial Advisers would remain in place or would now be dealt with under the new S37A and S37B. As S38 has been replaced with a new provision for corporate and designated business groups, the existing S38 appears to have been removed. If this is the intention, the new requirements under S37A and S37B would impose an unduly cumbersome burden on Licensed Financial Advisers and industry.

Proposed Requirements under section 37A & 37B of the Act and Chapter 7 of the Rules may be overly prescriptive and, in some cases, unworkable

As noted above, if the requirements under the proposed S37A, S37B and new Chapter 7 additions are intended to be applied to Licensed Financial Advisers, these requirements would broadly be unworkable.

If these requirements are intended to only be applied to deemed reliance for ACIP conducted in foreign jurisdictions, initial feedback provided includes:

- S37A(5) - Termination of agreements of arrangements within 5 days is unlikely to be practical, given termination clauses in agreements and the length of time required to implement alternative arrangements;
- As a matter of consistency, it is requested that the timeframe reference in S37A(5) be changed to refer to business days in line with the timeframe reference in S37B.
- S37B(1)(c) - The preparation of written records of assessments within 10 business days may not always be possible;
- Chapter 7.1.3(1)(d) – Requirement for Board or senior managing official approval is not clear in terms of the level of detail expected to be approved. Further clarification would be helpful; and
- Chapter 7.1.5 – The requirement for assessments to be completed every 2 years may be excessive, given the consideration of risk (3 years may be appropriate where there is a low level of risk).

Tipping Off Offences

Industry has been working closely with AUSTRAC and Law Enforcement through the Fintel Alliance to make recommendations to the Department of Home Affairs to amend section 123 to allow for more effective information sharing between reporting entities, AUSTRAC and law enforcement to disrupt financial crime.

While the proposed amendments to Tipping Off provide some additional relief for related bodies and auditors, they do not address previous submissions and discussions to allow for broader sharing of information.

Carrying out an Applicable Customer Identification Procedure (ACIP) before commencement of provision of designates services (S32)

Some FSC members have noted discussions between AUSTRAC and the ABA to recognise certain existing practices where accounts are opened prior to completion of the ACIP, provided that the full operation of the account was not permitted until the ACIP was completed (as per AUSTRAC's Guidance Note, 'Opening and Account' issued in December 2007). This does not appear to have been acknowledged in the proposed amendments.

The risk associated with maintaining existing practices is expected to be limited given that a customer cannot transfer or withdraw any money from their account until full ACIP was completed.

I confirm the above suggestion of holding a workshop involving yourself and other government representatives to discuss the above issues as well as the request for there to be additional time to permit our members to further consider the Bill and provide more detailed feedback.

Yours faithfully

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