

Submission to the Senate Legal and Constitutional Affairs Legislation Committee

Inquiry into the provisions of the Anti-Money Laundering and Counter-Terrorism Financing Amendment Bill 2024

Introduction

The Victorian Legal Services Board (**the Board**) and the Victorian Legal Services Commissioner (**the Commissioner**) are the independent statutory authorities responsible for the regulation of the legal profession in Victoria under the *Legal Profession Uniform Law (Victoria)* (**the Uniform Law**),¹ both authorities being accountable to the Victorian Parliament. The two authorities effectively operate as one body, the Victorian Legal Services Board + Commissioner (**VLSB+C**).

VLSB+C welcomes the opportunity to respond to the Senate Legal and Constitutional Affairs Legislation Committee's Inquiry (**Inquiry**) into the provisions of the Anti-Money Laundering and Counter-Terrorism Financing Amendment Bill 2024 (**AML/CTF Bill**).

Lawyers should be aware of the risk that their expertise may be exploited by criminals seeking to conceal and launder illegally obtained money. We therefore support measures that would expand the anti-money laundering and counter-terrorism financing (**AML/CTF**) regime, so it applies to lawyers who provide designated services. We also support proposals to simplify, modernise and improve the existing regime to ensure it is fit-for-purpose.

We have previously commented on the proposals that form the basis of the AML/CTF Bill in two submissions to the Commonwealth Attorney-General's Department (**AGD**) in June 2023 and 2024, and we made further comments on the topic of money laundering in a submission to the Parliament of Australia's Joint Committee on Law Enforcement's *Inquiry into the capability of law enforcement to respond to money laundering and financial crime*. We attach our three submissions for your reference at [Attachment A](#), [Attachment B](#) and [Attachment C](#).

This submission specifically addresses the provisions of the AML/CTF Bill which create exceptions to designated services and re-frame the existing tipping off offence as these are issues of particular importance to us. We also address proposed information sharing arrangements with AUSTRAC.

Existing Regulation – Overview

The legal profession has been regulated in Victoria for over a century. The Uniform Law currently provides a robust and effective regulatory framework with a strong consumer protection focus through promotion, monitoring and enforcement of high professional standards for legal practitioners.² VLSB+C works co-operatively with a range of stakeholders to support these standards, including the representative bodies of the Victorian legal profession, being the Law Institute of Victoria and the Victorian Bar,³ as well as a range of other organisations, including regulators which are part of the Uniform framework.⁴

The Uniform Law commenced on 1 July 2015 in Victoria and New South Wales, and on 1 July 2022 in Western Australia, establishing a common 'uniform' framework for regulation across those states. The Uniform Law forms Schedule 1 of the *Legal Profession Uniform Law Application Act 2014* (Vic) (**the Application Act**) and is

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

² The six objectives of the Uniform Law are set out in section 3 of the Uniform Law.

³ Some statutory functions are delegated to these bodies, for example, fidelity fund claim investigations is a function delegated to the Law Institute of Victoria.

⁴ Including the Commissioner for Uniform Legal Services Regulation, the Legal Services Council and the NSW regulators.

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implemented in Victoria through that Act. One of the main objectives of the Uniform Law is to provide and promote inter-jurisdictional consistency in the regulation of legal practitioners.

Although VLSB+C operates effectively as one body, the Board and the Commissioner are allocated separate regulatory functions under the Application Act. The Board is responsible for a broad range of regulatory functions, including:

- issuing, renewing, suspending, cancelling and imposing conditions on practising certificates including making decisions about whether an applicant is a fit and proper person to practice law;
- maintaining the Victorian legal profession register and register of disciplinary action;
- monitoring, inspecting and conducting investigations of law practices' trust accounts;
- administering a range of external interventions into law practices from compliance audits to the appointment of a receiver; and
- prosecuting breaches of the Application Act, including applying for removal of lawyers' names from the Supreme Court roll where necessary.

Of particular relevance to this submission is the Board's role in regulating trust accounts. The provision of legal services often requires the safe, reliable transfer of money, which is typically conducted through law practices' trust accounts. As part of our licensing responsibilities the Board makes decisions about whether an applicant is a fit and proper person to hold an Australian practising certificate authorising the receipt of trust money.

The Commissioner is responsible for receiving, investigating and resolving complaints about the conduct of lawyers, made by members of the public or on the Commissioner's own motion. Complaints can be made about a lawyer's conduct both during and outside of legal practice. An investigation may result in the Commissioner taking a variety of disciplinary actions. Regulatory actions against lawyers are in addition to other general criminal or civil sanctions, and both the Board and Commissioner are obliged to report serious offences to the relevant prosecuting authority.⁵

The Commissioner also has an important role in educating the community and the legal profession on issues relevant to the delivery of legal services to the Victorian community.

Designated services

The AML/CTF Bill proposes to add a new table (Table 6) of 'designated services' offered by professional service providers (including lawyers), to which AML/CTF obligations will apply.

Item 3 of Table 6 creates the designated service of "*receiving, holding and controlling (including disbursing) or managing a person's money, accounts, securities or securities accounts, virtual assets, or other property as part of assisting the person in the planning or execution of a transaction, or otherwise acting for or on behalf of a person in a transaction, in the course of carrying on a business, other than in a circumstance covered by subsection (5C).*"⁶

Of particular interest to us is proposed new subsection 6(5C)(a), which makes it clear that money or other property that is held or managed for payment for provision of goods or services by a business is **not** a designated service (of the type referred to in Item 3).

We further note the explanatory memorandum to the AML/CTF Bill states that one of the key outcomes of the exceptions at new subsection 6(5C) is that businesses operating trust accounts will not be regulated under the AML/CTF regime purely for operating a trust account in the absence of providing any designated services.⁷

Our concern is the exception in subsection 6(5C)(a) would permit transactions that pose a high risk of facilitating money laundering, noting that payments into lawyers' trust accounts can be mischaracterised as being fees for

⁵ See Section 465 of the Uniform Law

⁶ Anti-Money Laundering and Counter-Terrorism Financing Amendment Bill 2024 (Cth) sch 3 cl 10.

⁷ Explanatory Memorandum, Anti-Money Laundering and Counter-Terrorism Financing Amendment Bill 2024 (Cth) 84 [372].

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professional services. Our trust account investigators have previously identified concerning incidents of money being paid into trust accounts with no apparent link to the legal services which are being provided by those law practices, or money purportedly being paid for 'professional fees and disbursements' with amounts far exceeding reasonable legal costs. By taking payments for services outside of the AML/CTF scheme, there remains a manifest risk of such payments being misdescribed as a cover for money laundering, which would thereby defeat the purpose of the AML/CTF reporting regime.

Our position is that all lawyers should be wary of receiving funds where they are not clearly linked to the provision of legal services, and all prudent practitioners should be making enquiries of the source of funds and client's identity in these circumstances.

We discuss this issue further in our previous submissions to the AGD ([Attachment B](#)) and to the Joint Committee on Law Enforcement ([Attachment C](#)).

Tipping off offence

The VLSB+C is supportive of proposed amendments to the tipping off offence included in the AML/CTF Bill, which would reframe the existing offence to focus on preventing disclosure of information where disclosure would or could reasonably be expected to prejudice an investigation. We note the Explanatory Memorandum to the AML/CTF Bill provides examples of disclosure that is not intended to constitute tipping off under the reframed offence and that these examples include disclosure to Australian law enforcement, regulatory or oversight agencies, as well as in compliance with a requirement under a law of the Commonwealth, a State or Territory.⁸

As noted in previous submissions, we have encountered authorised deposit-taking institutions (**ADIs**) failing to comply with their statutory obligations under section 154 of the Uniform Law, by not reporting irregularities in law practice trust accounts to us. The ADIs have explained this failure on the basis that complying with section 154 may breach the current tipping off offence in the AML/CTF legislative regime. This is a serious concern for us, as disclosure under section 154 is an important consumer protection — receiving early information about potential trust account irregularities gives us notice of potentially serious problems within a law firm. Being able to quickly investigate and address these problems helps us mitigate consumer harm, and reduce potential claims on our Fidelity Fund.

We are satisfied the proposed changes contained within the AML/CTF Bill provide greater clarity about ADIs' obligations to provide information to us, as required under section 154.

We recognise further guidance from AUSTRAC would be useful to better assist both reporting entities and ADIs to understand the practical operation of the reframed tipping off offence. We have already commenced engagement with AUSTRAC to assist them to develop and distribute guidance.

Information sharing

VLSB+C and AUSTRAC have a joint interest in ensuring that lawyers do not knowingly or unwittingly facilitate money laundering or terrorism financing. A lawyer's involvement in these kinds of conduct would trigger immediate consideration of whether they continue to be a fit and proper person to hold a practising certificate, and whether potential disciplinary action is warranted.

As we have noted in our previous submissions, Part 9.4 of the Uniform Law permits us to make arrangements with Australian authorities for exchanging, obtaining or disclosing information relevant to any of our functions;⁹ to request information in cooperation with, or with the assistance of, any agency; and to use that information in the exercise of our functions.¹⁰ However, it does not **require** other authorities to enter into information sharing arrangements with us,

⁸ Explanatory Memorandum, Anti-Money Laundering and Counter-Terrorism Financing Amendment Bill 2024 (Cth) 101 [474].

⁹ Section 436 of the Uniform Law

¹⁰ Section 441 of the Uniform Law

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or to provide information to us upon our request. A lack of mandated information sharing may delay our ability to identify lawyers involved in money laundering.

AUSTRAC already shares information with a number of [Commonwealth, State and Territory government partners](#). Our role as the legal regulator in Victoria is to ensure that the Victorian legal profession is held to the highest professional standards, to protect the consumers of legal services and to support the rule of law.

Having clear, codified arrangements for information sharing with AUSTRAC would support us in that role, and enable us to support AUSTRAC in its objective of detecting, deterring, and disrupting criminal abuse of the financial system.

Through this process VLSB+C has built closer ties with AUSTRAC and we look forward to continuing to work with them closely as they codify partnerships as part of an implementation process.

Conclusion

We thank the Senate Legal and Constitutional Affairs Legislation Committee for the opportunity to provide input into the Inquiry and hope that our comments will be taken into consideration.

Yours faithfully

Fiona McLeay

Board CEO and Commissioner

Attachments

Attachment A: VLSBC Submission - 2023-06-16 - Submission to AGD proposals on modernising Australia's AML-CTF regime

Attachment B: VLSBC Submission - 2024-06-14 - Submission to AGD second stage consultation on AML-CTF reforms

Attachment C: VLSBC Submission - 2024-07-26 - Submission to the Joint Committee on Law Enforcement's Inquiry into Money Laundering and Financial Crime