



**WATERSTONE**  
ANTI-MONEY LAUNDERING

Committee Secretary  
Senate Legal and Constitutional Affairs Committee  
Department of the Senate  
PO Box 6100  
Parliament House  
CANBERRA ACT 2600  
27 August 2021

Dear Secretary

**Submission to the Inquiry into the adequacy and efficacy of Australia's AML/CTF regime**

Waterstone AML is pleased to make this submission to the Inquiry. The submission responds to questions in the Inquiry's discussion paper relating to the regulation of DNFBPs in Australia and challenges for smaller entities in complying with Australia's AML/CTF laws.

**About Waterstone AML**

Waterstone AML is a specialist AML/CTF consultancy established in 2019. Waterstone AML's Principal and Founder is Amanda Wood. Amanda has over 25 years' regulatory compliance experience spanning the public, private and consulting sectors in Australia. Amanda works with a range of entities to review the effectiveness of AML/CTF Programs, develop and oversee AML/CTF remediation projects, undertake money-laundering and terrorism financing risk assessments and deliver Board and senior management financial crime training.

Amanda has held senior financial crime roles in two of Australia's major banks, as Group Money Laundering Reporting Officer at Westpac and Head of Financial Crime at the Commonwealth Bank. Amanda was also AUSTRAC's General Manager for Compliance for over seven years, where she had responsibility for leading AUSTRAC's compliance and enforcement functions. During the 2015 Mutual Evaluation of Australia, Amanda was part of the Australian Government's delegation to the Financial Action Taskforce (FATF).

Should you wish to discuss any element of this submission in further detail, please contact me on

Yours sincerely

**Amanda Wood**  
**Principal**



# WATERSTONE

## ANTI-MONEY LAUNDERING

### **Responses to questions in the Inquiry's Discussion Paper**

*What are the impediments to Australia regulating DNFBPs? What reasons or explanations have been advanced for Australia not implementing additional legislative corrective action in relation to DNFBPs?*

The FATF defines DNFBPs to include casinos, real estate agents, dealers in precious metals, dealers in precious stones, lawyers, notaries, accountants, trust and Company Service Providers.

The Parliament passed the *Anti-Money Laundering and Counter-Terrorism Financing Act* in December 2006 subject to a two-year transition period. The Act represented the Government's first tranche AML reform agenda. The Act applies not only to the financial sector but also to the gambling sector (including casinos) and bullion dealers; sectors included within FATF's definition of DNFBPs.

As noted in the second reading speech to the AML/CTF Bill, a second tranche of reforms was intended to be introduced by the Government to cover real estate agents, jewellers, lawyers and accountants. Work on the second tranche reforms was intended to commence after the implementation of the first tranche.

In mid-2007, the Government commenced the consultation process for Tranche 2 but this work was put on hold in late 2008. The Government stated that the delay was due to the stress placed on business by the global financial crisis.

Since that date, the main impediments to implementing reforms to capture the remaining DNFBPs within Australia's AML/CTF regulatory regime appear to be concerns around compliance costs to the large number of small businesses that would be captured by Tranche 2 and a perception that there is insufficient evidence that money laundering and terrorism financing occurred through these types of entities. For lawyers, specific concerns have been raised about the potential for conflict between requirements to report suspicious matters to AUSTRAC and the need to maintain client confidentiality.

To mitigate against these concerns, in April 2016, the "Report on the Statutory Review of the AML/CTF Act 2006 and associated rules and regulations" (the Statutory Review) included an extensive discussion on the risks associated with these types of entities. It recommended that in putting together reform proposals, the Government should conduct a comprehensive cost-benefit analysis.

In November 2016, the Attorney-General's Department issued a consultation paper on Options for regulating lawyers, conveyancers, accountants, high-value dealers, real estate agents and trust and company service providers. In late 2017, the Financial Crime Section of the Attorney-General's Department was moved to the Department of Home Affairs and work stalled in relation to Tranche 2.



# WATERSTONE

## ANTI-MONEY LAUNDERING

*What are the potential risks, costs or other unintended consequences of poor design or implementation of additional AML/CTF regulation? To what extent do recommendations in the 2016 AGD Review remain relevant to the regulation of DNFBPs in Australia? Is AUSTRAC's design, operational approach and effectiveness in enforcing existing legislation appropriate for implementing Tranche 2 legislation, investigation and compliance requirements?*

As noted above, one of the primary concerns in applying AML/CTF requirements to Tranche 2 entities is the costs associated with compliance.

Notably, the set of obligations required to be applied to Tranche 2 to meet the global standards is less than that for financial institutions. The FATF recommendations only require that customer due diligence, record keeping and suspicious transaction reporting be applied to DNFBPs. Limiting Tranche 2 regulation to these requirements in Australia would mean a significantly lower regulatory burden for Tranche 2 entities relative to Tranche 1.

In relation to issues raised about the interaction of AML laws and client confidentiality, the interpretive notes to the FATF recommendations specifically allow legal professionals not to report suspicious matters where doing so would conflict with their professional obligations.

Notwithstanding the above, it is undoubtedly the case that AML laws in Australia are complex and challenging to interpret. In particular, the requirements relating to customer due diligence (or KYC) are unnecessarily complicated. Simplification of CDD, which is likely to be one of the key requirements applicable to Tranche 2 entities, was recommended in the Statutory Review but has not been undertaken.

In addition to regulatory simplification, the provision of better, more straightforward advice and guidance by AUSTRAC to its regulated population to provide certainty on how to comply with AML obligations would assist in reducing regulatory costs. These measures would provide regulatory benefits to not only Tranche 2 but also Tranche 1 entities (many of which are also small businesses).