

14 November 2016

Financial Crimes Section
Attorney-General's Department
3-5 National Circuit
BARTON ACT 2600

By email antimoneylaundering@ag.gov.au

Dear Sir/Madam

Project Plan: Implementation of the recommendations from the statutory review of the anti-money laundering and counter-terrorism financing regime - Industry consultation draft

The Australian Bankers' Association (**ABA**) appreciates the opportunity to provide comments on the Attorney-General's Department's Project Plan *Implementation of the recommendations from the statutory review of the anti-money laundering and counter-terrorism financing regime* – Industry consultation document (**project plan**).

With the active participation of its members, the ABA provides analysis, advice and advocacy for the banking industry and contributes to the development of public policy on banking and other financial services. The ABA works with government, regulators and other stakeholders to improve public awareness and understanding of the industry's contribution to the economy and to ensure Australia's banking customers continue to benefit from a stable, competitive and accessible banking industry.

The statutory review

The ABA remains fully supportive of the implementation of all 84 recommendations from the statutory review of the anti-money laundering and counter-terrorism financing regime and would welcome a statement from government that accepts and supports the adoption of all recommendations. The ABA and members will continue to work with the Australian Transaction Reports and Analysis Centre (**AUSTRAC**), the Attorney-General's Department (**AGD**) and other stakeholders to help keep Australia safe from financial and other serious crime. Banks are one of many industries that play a role in detecting, deterring and disrupting financial crime risks and threats that affect Australia's financial system.

The ABA welcomes the draft project plan and is pleased to provide comments based on our depth of practical experience in implementing Anti-Money Laundering (**AML**) and Counter-terrorism financing (**CTF**) reforms in Australia. The ABA notes the collaborative approach taken by the AGD and AUSTRAC in relation to the statutory review of the AML/CTF regime (**the review**) and this project plan.

Throughout the review, the ABA has worked alongside the Australian Financial Markets Association (**AFMA**) which is the industry body representing participants in the securitisation and covered bond markets. The ABA and AFMA share common members and objectives, therefore the AGD will see both AFMA and ABA aligned in recommending a number of changes to the plan.



The project plan

The ABA is generally supportive of the project plan. In particular, and subject to our recommendations below, the ABA supports the proposed two-stage path for implementation.

Implementation timeframe

As a general comment, the ABA considers the timeframes proposed to be overly ambitious for such important reforms. Authorised deposit-taking institutions (**ADI's**) will play their part in the implementation, however, extensive experience of ABA members in implementing AML/CTF reforms dictates that some significant adjustments will need to be made to the proposed implementation plan.

The strong preference of ABA members is to have packages of 'like' or 'interdependent' reforms implemented simultaneously to reduce the requirements for reporting entities (**REs**) to make multiple amendments to their compliance frameworks.

The ABA makes five points:

- 1) It is difficult to comprehensively comment on the project plan without seeing the detail as it is not yet clear which proposals will require technology and process changes. The strong preference of ABA members is to each establish a major internal project to implement the changes in a holistic and less costly manner. In order to do this, ADIs will need clear and detailed timeframes and finalised legislation with adequate implementation timeframes. In an environment of multiple competing projects, it is a reality that projects within banks (and elsewhere in the economy) are only funded when there is legislative certainty and deadlines are defined. It is not possible to commence projects which involve technology changes until the scope and requirements are *finalised*. More broadly, ADIs need flexibility to align changes where possible with other reforms such as Common Reporting Standard (**CRS**) to minimise systems re-work and additional costs.
- 2) The proposed plan allows for consultation on the policy settings but appears not to provide time for the design, drafting and consultation on the resulting rules or legislative instruments. Previous experience dictates that the design and drafting of rules and instruments is the most complex and time consuming part of any reform. To not allow adequate time for this process will likely result in inferior rules which would be detrimental to the quality of the regime that AUSTRAC administers and more costly for entities to implement and administer.
- 3) The draft project plan notes the timing of any reform packages should be cognisant of other reforms occurring that will have a regulatory impact on industry. This should be expanded to expressly include the fact that ADIs have already committed, funded and scheduled their project workload for 2017 and are already scheduling 2018 given the amount of international and domestic reforms already adopted by government and scheduled for 'go live' between now and 2019. Given the tsunami of regulatory reforms, the current lead time for technology changes for an ADI is a minimum of 18-24 months. Equally, given the amount of reform, banks now schedule regular Enterprise Technology Releases as a mechanism to deal with so many competing projects. AUSTRAC and the AGD can assist industry by giving ADIs adequate implementation timeframes and acknowledging that periodic Enterprise Technology Releases are now an industry norm.

To give some context, ADI's in Australia are implementing an extraordinary number of international and domestic regulatory reforms concurrently. On the international front these include the remaining Basel III reforms to capital, liquidity and risk such as NSFR, SA-CCR and FRTB, the regulatory treatment of accounting provisions and operational risk reforms. These sit alongside the imminent Basel IV reforms to enhance the risk sensitivity and robustness of standardised approaches, reforms to alter the role of internal models in the capital framework and policy to finalise the design and calibration of the leverage ratio and capital floors. Banks also have to implement other international reforms such as Volcker, IFRS 9, FATCA, CRS, G20 OTC reforms and MiFID 2.



Domestically, APRA's policy agenda includes: recovery and resolution planning; amended reporting of level 3 aggregate risk and intergroup transactions exposures; reporting of banks' international exposures; new residential mortgage lending reporting obligations; enhanced Pillar 3 disclosures; and the implementation of the FSI recommendations on TLAC and capital. APRA also recently released standards on securitisation and have flagged imminent reforms to outsourcing, business continuity management and security risk in information and information technology. These reforms sit beside APRA's recently final requirements for margining and risk mitigation for non-centrally cleared derivatives.

The ATO is undertaking substantial reforms to third party data, OECD and Country-by-Country reporting.

ASIC is working with industry on reforms to breach reporting, financial advice, responsible lending obligations, comprehensive credit reporting, market integrity rules, client monies and financial benchmarks.

Treasury is overseeing reforms to ASIC's industry funding model, a review of external dispute resolution, the introduction of a last resort compensation scheme, superannuation and Managed Investment Trusts.

These sit alongside the Productivity Commission's review into data availability and use and the Reserve Bank of Australia's New Payments Platform.

ADIs regardless of size, have a limited amount of resources to deal with so many competing projects. Implementation timeframes in the final project plan need to consider the volume of regulatory reform impacting the sector.

- 4) The Financial System Inquiry's Final Report recognised this ever increasing burden with Government accepting the inquiry's 31st recommendation, namely to increase the time available for industry to implement complex regulatory change. Government agreed to provide industry appropriate time to implement regulatory change and also committed to reflect this in their Statement of Expectations to all agencies.

The final AGD project plan should make good its commitment to ensure the timing of any AML/CTF reform packages also be cognisant of other reforms occurring concurrently that will have a regulatory impact on industry.

- 5) The teams tasked with building, monitoring and maintaining the AML/CTF systems and processes in banks are the same resources who will have to respond to the AGD and AUSTRAC consultations. The increasing financial impact on AML/CTF budgets for the AUSTRAC cost recovery regime, likely means that for some banks the funding for temporary AML project resources (who will be in high demand) remains constrained. Given these constraints and the daily workload of staff, AUSTRAC and the AGD must therefore allow industry enough time to facilitate proper analysis of complex reform proposals.

The project plan

Importance of progressing Tranche II implementation

Source: P1.7 Cost-benefit analysis of Tranche II

It is vital that Australia implements Tranche II to close the current gaps in the Australian ML/TF regime. The ABA queries why Tranche II does not appear in the AGD's draft project plan beyond a mention of a cost benefit analysis.



The Financial Action Task Force's (**FATF**) *Australia, Mutual Evaluation Report*¹ points out that most designated non-financial business & professional sectors are not subject to AML/CTF requirements', and that this sector did not demonstrate 'an adequate understanding of their AML/CTF risks or have any measures in place to mitigate them effectively. FATF has identified both lawyers and real estate agents to be of "... high ML risk in Australia's National Threat Assessment". The FATF recommended actions for Australia are to 'ensure that lawyers, accountants, real estate agents, precious stones dealers, and trust and company service providers understand their ML/TF risks and are required to effectively implement AML/CTF obligations and risk mitigating measures in line with the FATF standards', the project plan should reflect, in detail, the steps of this important reform ...".

With the commencement of both FATCA and CRS, which come into effect on 1 July 2017, reliance on AML processes to identify and verify the actual controlling person and beneficial owner has become even more important for banks. The OECD has legislated that countries that have an AML/CTF standard approved by FATF (i.e. has fully implemented recommendation 10) can rely on their AML program for the purposes of complying with CRS. There should be no simplified process provided to Tranche II reporters as they create the complex structures, and they are in the best position to report the structures to a central register to help all REs meet all of their legislative obligations.

The ABA recommends progressing the Tranche II reforms as a priority. The ABA also supports AFMA's recommendation on approach, where the consultation in respect of Tranche II expressly includes existing reporting entities.

General comments on Phase 1

The project plan states that Phase 1 initiatives are due for completion in 2017, however, there are a number of key non-legislative projects highlighted for inclusion in Phase 1. This includes CTF measures and transitioning the oversight of compliance with the sanctions regime to AUSTRAC. At the quarterly AFMA/ABA liaison meeting with AUSTRAC on 26 October 2016, AUSTRAC explained that the consultation on these reforms between government agencies would be completed by December 2016, and that industry consultation would follow in early 2017.

Given that Phase 1 is due for completion at the end of 2017, the timeline is overly condensed for Government to consult properly with industry on these changes and the expectation that industry would be able to implement these in less than one year is unrealistic.

In particular, with regards to sanctions, there would be a substantial effort expected to integrate this into AML/CTF programs which has been previously suggested by AUSTRAC, noting that any material changes to AML/CTF programs would require changes to policy, standards, processes and senior management/Board approval. Technology changes, if required, would not be possible in this timeframe. If industry consultation occurs as scheduled on the regulation of sanctions in early 2017, the implementation of any change should be extended to 2018 (or at a minimum the consideration of an adequate transition period be provided). The ABA suggests that timelines in relation to the consultation on the regulation of sanctions and any proposed amendments to the AML/CTF Act should also be included in the project plan.

Regarding proposals to amend the CTF regime, the project plan is unclear as to what is being proposed. If there are any changes associated with CTF that require changes to systems and processes, ADIs will need sufficient time for consideration and implementation. Without understanding the details of the measures, it is difficult to say how much time would be required for implementation of the changes.

¹ FATF and APG (2015), *Anti-money laundering and counter-terrorist financing measures - Australia*, Fourth Round Mutual Evaluation Report, FATF, Paris and APG, Sydney



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General comments on Phase 2

The project plan articulates that Phase 2 includes changes to AML/CTF programs and guidance for reporting entities on assessing ML/TF risks and developing AML/CTF programs as well as the frequency of independent reviews of AML/CTF programs and conducting customer due diligence. These aspects need to be considered together with the simplification of the rules which provides more weight to having the reforms considered together rather than in two separate phases. The AML/CTF program is the foundational component for AML/CTF compliance and the management and mitigation of ML/TF risk. Banks need clarity around what is expected from AUSTRAC in terms of any changes to AML/CTF programs before other reforms can be implemented. Independent review of AML/CTF Programs requires early visibility of any changes to ensure that needs are factored into audit plans of banks.

Co-design with industry

An overarching recommendation arising from the review of the AML/CTF regime is that any reforms to the AML/CTF Act and Rules that have a regulatory impact should be co-designed by Government and industry (Recommendation 2.5). The ABA believes this should apply to both legislative and non-legislative components of the reforms.

The project plan itself should outline how the reforms will be co-designed with industry, with some guidance as to the steps to be undertaken in this process. This recommendation will apply to the implementation of both phases of the project. For example, the ABA would expect co-design to include elements of cooperation during the policy formation and rule drafting process, prior to public consultation, this would ensure many technical issues could be resolved earlier.

The design and drafting of the actual rules and legislative instruments is the most complex and time consuming part of AML/CTF reforms. The timeframes in the project plan fail to recognise the size of this task. For example, the ABA would expect co-design to include elements of co-operation during the policy formation and rule drafting process, prior to public consultation, this would ensure many of the technical issues are addressed in advance.

Specific comments on project deliverables

Audit, enforcement and information-gathering

Source: P1.2 (c) 'remedying past contraventions'

The ABA strongly believes the reach of this reform should not and cannot be retrospective. Remediation should only be captured under the reforms where they occur post the commencement date of any relevant provision. There should be no retrospectivity associated with this.

Clear definition of scope

Source: P1.2 (d) 'minor regulatory offences'

Robust and clear definitions are critical e.g. "minor regulatory offences" gives no indication of the size or scope of this item of work in the project plan, and therefore it is difficult to comprehensively comment without seeing the detail.



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Sanctions

Source: P1.9 Sanctions law

Sanctions laws carry a strict liability offence rather than risk-based program compliance. Further, sanctions obligations are not restricted to particular types of products, services or organisational constructs. As discussed earlier under “General comments on Phase 1” the ABA strongly recommends that the AGD makes the detail available for government and industry consultation as soon as possible and that the timeframe for implementation of sanctions be extended across both phases of the AGD plan. This will ensure that change programmes can be aligned to ensure end-to-end solutions, minimising cost and achieving more sustainable compliance solutions across industry.

AUSTRAC Compliance Guide

Source: P1.11 Other AUSTRAC Projects

The project plan states “AUSTRAC compliance guidance enhanced on an ongoing basis”. The ABA strongly cautions that even minor changes to AUSTRAC’s compliance guidance can result in significant costs for regulated entities.

The ABA maintains that simplified rules should negate the need for guidance. Guidance documents create unnecessary complications as they have no legislative force, but AUSTRAC rely on them somewhat for interpretation of the Rules/Act.

Simplification of the Act and Rules and compliance with the FATF standards

Source: P2.1 Simplification of the Act and Rules and compliance with the FATF standards

In Phase 1, the simplification of the Act and Rules and compliance with FATF standards should be done simultaneously, prior to any other changes and should take place as a priority. It is not practical for banks to consider or implement other aspects of the project plan without the simplification of the rules occurring first. Considering changes to the Act and Rules separately will lead to unnecessary rework and increased compliance costs for industry.

The ABA strongly recommends that rule simplification needs to happen earlier. Items listed in the project plan at P2.1 should be brought forward into Phase 1.

The ABA notes the items under P1.3 do not adequately address the matters raised under 5.2 of the FATF recommendations. Addressing the items listed in the project plan at P2.1 in Phase 1 would also cover the issues raised in FATF recommendation 5.11.

Correspondent banking definitions

Source: P2.1 Simplification of the Act and Rules and compliance with FATF standards

The ABA is concerned that the correspondent banking initiatives are not included in Phase I. Particularly given the extent to which Australia’s requirements are out of step internationally and the international focus around de-risking (as reflected in the recent FATF consultation). The ABA strongly recommends that the correspondent Banking initiatives be addressed in phase 1 given the impact on global operations.

Designated Business Group simplification

Source: P2.1 Simplification of the Act and Rules and compliance with FATF standards

Designated Business Group simplification should commence as early as possible to simplify and remove the burden associated with the formal lodgement of forms. This should also reduce the burden associated with the industry contribution as a RE should then be able to nominate the entity to receive the invoice rather than issuing one to each member of the DBG. DBG simplification is also a precursor requirement for sanctions reform so therefore needs to be scheduled into Phase 1.



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Consultations

Source: 3. Indicative timeline for key initiatives to be implemented under Phase 1 and 2 (Page 11)

It would be useful if the form and content of consultations was defined upfront as it is unclear what each particular consultation will cover and whether it will be a discussion paper, a draft policy or a draft policy with the associated rules and legislative instruments. For example, the 2016 'Consultation' period in 'Phase 1: legislative projects' relates to policy only as confirmed by AUSTRAC during the meeting.

The ABA encourages the AGD to review the approach APRA takes when consulting on major reforms. APRA often issues Discussion Papers prior to a policy consultation, which includes proposed policy settings, and draft prudential standards and guides. This allows industry to engage with both the policy and draft rule to ensure they mitigate both AML/CTF risk and also minimise compliance costs and duplication for reporting entities.

Conclusion

Should you have any questions please do not hesitate to contact me.

Yours faithfully

Signed by Aidan O'Shaughnessy

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