Australian Banking Association

Submission on the Consultation Paper - 2026 Reforms to the AML/CTF Act

Australian Banking Association

21 January 2026

Australian Banking Association

ABA submission to the Department of Home Affairs

The Australian Banking Association (ABA) welcomes the opportunity to comment on the *Consultation Paper – 2026 Reforms to the AML/CTF Act*. We recognise the growing complexity of Australia's financial crime landscape and the essential role that banks play in safeguarding customers and supporting national efforts to combat illicit activity. As criminal methodologies evolve and new technologies create novel avenues for misuse, it is essential that Australia's AML/CTF framework remains robust, risk-responsive and capable of addressing emerging harms. To support this objective, we acknowledge the challenges outlined in the consultation paper and broadly support reforms that strengthen the regime's ability to respond quickly and proportionately to high-risk products, services and delivery channels.

Within this context, the ABA recognises the particular risks posed by crypto ATMs, which have been linked to significant scam-related activity, high-risk cash-based transactions and the rapid movement of illicit funds. Consistent with the concerns identified by AUSTRAC and law enforcement, and reflecting statements the ABA has made publicly in the interests of consumer protection and financial system integrity, we support the consideration of restrictions or prohibitions on crypto ATMs. While any new power must remain evidence-based, transparent, and supported by appropriate safeguards, we agree that targeted regulatory action on crypto ATMs is justified given the demonstrated risk profile and the absence of a clear legitimate use case. More broadly, we support proportionate measures to address high-risk activity, while emphasising the need for clear safeguards and robust consultation to avoid unintended impacts on innovation and the operation of well-regulated sectors.

We also support the proposed amendment to the definition of 'financing of terrorism' in section 5 of the *Anti-Money Laundering and Counter-Terrorism Financing Act 2006* (AML/CTF Act). While this change is largely technical in nature, expressly capturing offences related to state-sponsored terrorism is an important step in ensuring the regime remains aligned with Australia's broader national-security and counter-terrorism objectives. As the consultation paper notes, reporting entities already address risks connected to state-sponsored terrorism through existing reporting obligations and customer due diligence in relevant circumstances. Notwithstanding this, clarifying the scope of these obligations in light of the new Criminal Code offences provides welcome regulatory certainty around policy intent and ensures the AML/CTF Act remains coherent with the wider counter-terrorism and sanctions framework.

Achieving the outcomes intended by these reforms will require ongoing collaboration between government and industry, grounded in our shared commitment to combating financial crime and protecting the community, and banks remain committed to supporting that partnership.

Australian Banking Association

Part 1: Proposed Power for the AUSTRAC CEO to Restrict or Prohibit High-Risk Products, Services, or Delivery Channels

The ABA supports in principle the introduction of a new power for the AUSTRAC CEO to restrict or prohibit high-risk products, services or delivery channels, provided that the proposed new power be limited to registrable services such as remittance and virtual asset providers. It should not extend to all designated services, many of which are delivered by established, highly regulated reporting entities with mature AML/CTF programs. We recognise that the financial crime environment is evolving rapidly, and that the regulatory framework must adapt to new technologies, emerging typologies and changes in financial sector infrastructure. At the same time, it is essential that any new power is exercised in a way that remains proportionate to ML/TF/PF risks, preserves room for innovation, and avoids unintended impacts on well-regulated sectors with mature AML/CTF programs.

We consider that this power should be applied in contexts where the risk is clearly demonstrated, guided by robust assessment and developed through meaningful consultation with industry. Transparent decision-making, meaningful consultation and coordination with other regulators will remain critical to ensure that regulatory responses are targeted, workable and supported by appropriate oversight.

Consultation questions

1. Do you have any views on the scope of this power applying to the provision of all designated services, or should the power be limited to registrable services?

- **Limiting the Power to Registrable Services**: For appropriate proportionality to the risks within the financial services sector, we recommend that the proposed new power be limited to registrable services such as remittance and virtual asset providers, rather than all designated services - many of which are provided by established, highly regulated reporting entities with mature AML/CTF programs. If the basis for introducing this power was to allow better regulation of registerable remittance and virtual asset services – given that reporting entities in other sectors are already regulated by multiple authorities (e.g. APRA, ASIC) - then it would be appropriate to limit the power in line with this. In addition, ASIC has a very similar Product Intervention Power that applies to those financial services that are regulated. Additionally, we recommend the Government should ensure consistency between the regimes to enable efficiencies in operationalisation.
- **Clarifying the Term "Registrable (Designated) Services":** We appreciate that the consultation paper uses the term "registrable (designated) services" to refer to those designated services that must be registered under Part 6 and/or Part 6A of the AML/CTF Act—namely, registrable remittance network providers, registrable remittance service providers and registrable virtual asset service providers. However, "registrable services" is not a defined term in the Act. To ensure clarity and consistency, the new provision should either define the term explicitly or directly reference the existing defined services or the relevant Parts of the Act.
- **Defining "Products", "Services" and "Delivery Channels":** The terms "products", "services" and "delivery channels" are not separately defined in the AML/CTF Act. To ensure clarity and consistent application, any new provision that empowers AUSTRAC to restrict or prohibit a product, service or delivery channel should clearly specify how these concepts connect to the provision of specific designated services.

- Further guidance would also be valuable on what AUSTRAC considers falling within each category in practice. For example, in the wholesale market, products may be bespoke and structured for a specific customer, counterparty or situation. It is unclear whether AUSTRAC would approach such matters at a class level or assess individual product/service characteristics. Providing clarity on this point would help reporting entities understand the intended scope of the power and assess potential impacts on their operations.
- **Clarifying the Nature of the Restriction or Prohibition**: Further clarity would be helpful on whether the proposed power is intended to restrict the *use* of a product, service or delivery channel, the *offering* of the product or service itself, or both. These distinctions have materially different operational, compliance, and customer implications for reporting entities and should be transparently outlined in the new provision.
- **Scope Implications for Outsourced Service Providers**: Additional guidance is also needed on whether the power could extend to products, services or delivery channels provided by entities that are not reporting entities but perform AML/CTF obligations on their behalf, such as outsourced service providers. If AUSTRAC intends for the power to apply in this way, further detail would be required on how such restrictions would operate in practice, noting that impacted reporting entities would require sufficient time to transition to alternative providers and may need legislative protections to terminate affected contracts.
- **Scope and Impacts to Offshore Permanent Establishments (OPEs)**: Further clarity is needed to understand if and how these new powers would apply to OPEs.
- **Exemptions and modifications**: The scope of this authority should be clearly defined so as not to restrict or nullify any existing exemptions and modifications. For instance, if an exemption (including any carve-out) has previously been granted, it is important to clarify whether this would continue to apply under AUSTRAC's powers with respect to those services provided by an exempt entity.

2. What products, services or delivery channels that enable designated services to be provided pose money laundering, financing of terrorism or proliferation, or serious crime risks that are difficult for reporting entities to manage and mitigate?

It would assist industry if AUSTRAC provided greater clarity on the types of products, services or delivery channels it is contemplating for potential use of these powers, whether through illustrative examples, insights from emerging-risk analysis, or learnings from higher-risk products identified in overseas markets. Early visibility would enable reporting entities to prepare and contribute more targeted feedback.

We understand that crypto ATMs have been identified as a potential candidate for this power given their higher risk characteristics and the prevalence of money laundering and scam-related activity, with AUSTRAC reporting that the vast majority of transactions involve illicit funds. These machines process hundreds of millions of dollars annually and have been linked to significant consumer harm. The ABA supports increasing regulation and applying appropriate restrictions on crypto ATMs, given the compelling evidence of their misuse and the absence of a clear legitimate use case. However, as with any decision under this proposed power, such action should be subject to the guardrails, clarifications and considerations outlined in this submission.

Decisions regarding other products, services or delivery channels should continue to be made on a case-by-case basis, informed by robust risk assessments and consultation with industry. This approach ensures that regulatory responses remain targeted, proportionate and do not unnecessarily stifle innovation or legitimate commercial activity.

3. What criteria should the AUSTRAC CEO be required to apply when making a decision to restrict or prohibit a high-risk product, service or delivery channel?

When considering whether to restrict or prohibit a high-risk product, service, or delivery channel, AUSTRAC should apply clear and robust criteria to ensure decisions are proportionate and evidence based. Key considerations should include:

- **Necessity and Appropriateness**: AUSTRAC should satisfy itself that restriction or prohibition is the most appropriate legislative solution to manage ML/TF risk. This requires assessing:
    - Whether alternative legislative tools or enhanced systems and controls could sufficiently mitigate the risk.
    - Whether imposing restriction conditions would achieve the same outcome as prohibition without fully removing the product or service.
    - Global practices and lessons from other jurisdictions to identify effective risk mitigation measures short of blanket bans.
- **Clarity on the "high-risk" threshold**: Given that what constitutes a "high-risk" product, service or delivery channel is continually evolving with new technologies, crime types and contextual factors, it would be helpful for AUSTRAC to share, at least at a principles-based level, how it will satisfy itself that the relevant threshold of "high-risk" has been met. Clear guidance on this point would also assist reporting entities to more effectively manage their own ML/TF risks and provide guardrails when designing products, services and delivery channels.
- **Risk Assessment and Demonstrated Harm**: AUSTRAC should demonstrate that the risk presented by the relevant product or service cannot be mitigated through other means and that prohibition is necessary to protect the community and financial system.
- **Operational and Implementation Feasibility**: AUSTRAC should consider the readiness and capacity of the financial system and community to implement changes, including:
    - Complexity and feasibility of system/process changes.
    - Timeframes for implementation and transition.
    - Customer or third-party contracts, liability, and legal risks for regulated entities.
    - Customer engagement and communication requirements.
    - Jurisdictional risks for products/services offered through overseas establishments and potential conflicts with foreign regulatory requirements.
    - Interaction with requirements from other Australian regulators (E.g. APRA, ASIC, ACCC, etc.).
- **Consistency and International Alignment:** AUSTRAC should leverage positions and approaches taken by other jurisdictions where similar issues have been addressed, ensuring alignment with global standards and avoiding unnecessary divergence. The UK FCA appears to have a similar framework in place, has AUSTRAC conducted any assessment of how this is implemented in UK and other equivalent regions. Short Selling was banned/restricted temporarily, during the 2008 GFC in several countries, including Australia and US, by regulators like ASIC and SEC. Were there any learnings from this to consider for this framework?
- **Public Interest:** We note that the consultation paper proposes a criterion requiring AUSTRAC to consider "whether the continued use of the product, service or delivery channel is likely to cause harm to the community that outweighs the public interest in its continued use". However, what is meant by the "public interest" for the purpose of exercising this power should be clearly articulated. For example, it is unclear whether considerations such as the facilitation of "efficiency, flexibility and innovation in the provision of financial products and services", which governs ASIC's product intervention power, would also be relevant in this instance. We

support the inclusion of a criterion that requires AUSTRAC to weigh the demonstrated ML/TF harm against the broader value the product or service provides to consumers and the community when determining whether restriction is proportionate.

Applying these criteria will help ensure that the power is exercised in a targeted, proportionate manner that addresses genuine risks without stifling innovation or imposing undue burdens on regulated entities.

4. Do you have any view on the proposed consultation and legislative instrument requirements when a decision is made and prior to it coming into effect?

We support the principle of industry consultation and the use of legislative instruments to provide transparency and parliamentary oversight. However, several practical considerations should be addressed:

- **Reasonable Implementation Timeframes**: Further to the feedback above, when a decision is made, the timeframe for implementation should reflect the readiness of the community and financial system. This includes the complexity of system changes, contractual obligations, and customer communication requirements.
- **Urgent Situations**: We appreciate that the consultation paper proposes a minimum 30-day consultation period for most decisions but acknowledges that, in certain urgent situations, consultation may not occur. It would be helpful for the legislation to clearly articulate the grounds the AUSTRAC CEO must be satisfied of in order to determine that a decision must be made urgently. Following any such urgent decision, it would also be beneficial for the community, market and reporting entities to receive an explanation of the reasons for the urgent action, to the extent possible while respecting tipping-off prohibitions, law-enforcement sensitivities and national-security constraints. Clear parameters and safeguards in urgent situations would provide greater regulatory certainty for affected entities.
- Without appropriate consultation, entities may face significant challenges in meeting compliance obligations and ensuring operational readiness, including addressing legal, contractual, and customer impacts identified in Question 3. To mitigate these risks, AUSTRAC could consider mechanisms such as transitional periods, targeted regulatory guidance, or temporary relief measures to support compliance without creating undue risk.
- It would also be helpful to understand whether the requirement to make a decision via a legislative instrument also applies to urgent decisions.
- **Access to Risk Assessment**: The proposed consultation and legislative instrument requirements indicate that information will be made publicly available to enable consultation. However, given the sensitivity of high-risk designations, it is important to clarify how this will work in practice. Entities should have a clear avenue to access AUSTRAC's underlying risk assessment to understand the basis for the decision and whether alternative mitigants were considered. Providing this level of transparency will help ensure decisions are proportionate, evidence-based, and allow industry to respond meaningfully during consultation. It is also important to clarify how existing legislative information-sharing and disclosure restrictions, such as those relating to 'AUSTRAC information' under section 121 of the AML/CTF Act, will apply to the information upon which AUSTRAC has based its decisions and to clearly enable all necessary information being shared with affected individuals and internally by entities to stakeholders.
- **Inclusivity of Consultation**: We welcome the proposal for public consultation rather than limiting input to entities AUSTRAC identifies as affected. This broader approach is essential, as organisations developing new products or services may not yet be visible to AUSTRAC but could nonetheless be significantly impacted by a proposed restriction or prohibition.

Providing open consultation ensures these entities—some of which may have already invested substantial resources into innovation—have an opportunity to contribute before decisions take effect.

5. Do you propose any particular safeguards or restrictions to the proposed new power for the AUSTRAC CEO to restrict or prohibit high-risk products, services and delivery channels and, if so, what should those safeguards be?

We consider it essential that robust safeguards accompany any new power enabling the AUSTRAC CEO to restrict or prohibit high-risk products, services, or delivery channels. These safeguards should ensure decisions are transparent, proportionate, and do not unnecessarily stifle innovation or disrupt legitimate financial services. Key safeguards to be considered:

- **Alignment with Existing Regulatory Powers**: Safeguards similar to those built into ASIC's Product Intervention Power are relevant considerations here, in particular:
    - The ability to target specific persons or cohorts of providers rather than imposing blanket restrictions across the entire sector;
    - Requirement for consultation with other regulators of the group to be prohibited (e.g. APRA or ASIC as relevant) when the restriction affects entities within their remit;
    - Whether an order may be time-bound or continuous; and
    - The right to independent review of AUSTRAC's decision.
- **Liability Protections for Affected Entities**: Further, it would be helpful to understand whether any safeguards from liability exist for those providers that are subject to a prohibition or restriction order. In particular, protection from civil liability for discontinuing products or services, and information as to how this may interact with the communication restrictions set out by the prohibition on tipping off. In this regard, AUSTRAC should consider whether section 235 of the AML/CTF Act is sufficiently broad to ensure protections for entities and individuals who are acting in response to the exercise of AUSTRAC's new power.
- **Decision Duration, Review Mechanisms, and Sunset Provisions**: The consultation paper states that the legislative instrument will set out the terms of each decision, including its duration, and provides an example of a three-year minimum period. However, it is unclear whether this timeframe is intended as an illustrative example or as the proposed default duration. We would welcome clarification from AUSTRAC on this point.
- Notwithstanding this, we recommend adopting a shorter duration, particularly during the early stages of implementing a new restriction or prohibition, and especially where the decision is made urgently with limited consultation. A shorter timeframe, similar to ASIC's 18-month limit, would allow industry and the community to observe the practical impact of the measure, provide feedback, and, if necessary, challenge the decision upon expiry.
- The consultation paper proposes an ability for the AUSTRAC CEO to extend or make a decision permanent via a subsequent legislative instrument. It would be helpful for AUSTRAC to outline the criteria (if it's different from the proposed criteria) that would need to be satisfied to justify an extension, and in particular, to support making a decision permanent.
- In addition, the AUSTRAC CEO should have the flexibility to shorten the duration where the underlying risk has been effectively addressed. There should also be a clear and accessible process for affected entities to engage with AUSTRAC for a review once an instrument is in effect, enabling them to present evidence and make submissions regarding whether the restriction/prohibition should be reduced, amended, or allowed to lapse.
- **Transparency and Public Interest**: We recommend that AUSTRAC demonstrates that any use of the power is necessary, proportionate, and genuinely in the public interest. Where AUSTRAC proceeds with a restriction despite contrary submissions from affected entities, the

basis for that decision should be published prior to the instrument coming into effect to allow industry and Parliament to understand the rationale.

- **Retrospective Consultation Where Immediate Action Is Needed**: In circumstances where pre-decision consultation is not possible (e.g., emergencies), AUSTRAC should consider undertaking retrospective consultation with affected parties as soon as practicable to ensure industry has an opportunity to provide input on the ongoing application of the power.
- **Implementation Timeframes**: Impacted reporting entities will require adequate implementation time to assess product terms and conditions, make necessary system changes, and manage customer communications. This is essential to ensure compliance while avoiding unintended disruption to customers or operational processes.
- **Consider limiting the restriction or prohibition to particular cohorts of providers:** Consider limiting any restriction or prohibition to specific cohorts of providers: The consultation paper indicates AUSTRAC's openness to applying targeted restriction conditions rather than full prohibitions. We support this direction, as regulatory responses should be proportionate to the level of risk rather than imposed as blanket sector-wide measures.
- Some new or amended designated services may span multiple sectors. A product offered in both the banking and remittance sectors, for example, may present significantly higher risks in the remittance context due to differences in maturity, scale, and regulatory oversight. Likewise, certain restrictions may be appropriate only for entities with exposure to particular jurisdictional risks, while remaining unnecessary for providers with demonstrably lower risk profiles.
- Comparable powers exercised by ASIC already incorporate this level of nuance and flexibility. AUSTRAC should adopt a similar approach to ensure that its decision-making supports more tailored, risk-sensitive, and effective regulatory outcomes.

6. Are you satisfied that the proposed model adequately captures products, services or delivery channels that enable the provision of designated services that may be high-risk now, or in the future?

Ultimately, this will be subject to whether the above feedback have been adequately considered.

It would also be helpful to understand whether these provisions apply to OPEs and particularly how do they apply if there are conflicting provisions under an offshore jurisdiction's regime?

7. Do you think the proposed offence penalty is sufficient to deter continued use of banned or restricted products, services or delivery channels?

- **Clarification on Scope of Prohibition**: We would welcome greater clarity on the circumstances in which the prohibition applies, including:
    - whether exemptions may be available in limited situations (e.g., where the provision of a prohibited product is incidental or does not create the high risk environment the reforms are intended to address); and
    - whether there would be consequences for dealing with, or banking, a provider of a prohibited service, and what AUSTRAC's expectations would be of reporting entities in monitoring any list of prohibited services.
- **Enforcement Approach:** While the proposal sets out an offence penalty, the consultation paper does not address how enforcement would operate. Existing obligations on unregistered remitters and digital currency exchange providers already function as a de facto prohibition, but enforcement activity against unregistered providers has been limited. It is therefore unclear how effective a blanket prohibition or restriction will be without a clear and practical enforcement path.

- It would also be helpful to understand how this new power is intended to complement AUSTRAC's existing enforcement toolkit. Further clarity on how and when the power would be use - and how AUSTRAC would assess that its use is in the public interest - would support transparency and provide greater certainty for reporting entities.
- **Risk of Unintended Outcomes:** Use of the offence and prohibition powers should be measured and proportionate. Overly rigid or broad application may risk driving high risk activity underground or towards unregulated channels, reducing visibility to the financial system and law enforcement. It will be important to ensure the framework supports risk mitigation rather than unintentionally amplifying ML/TF/PF threats.
- **Implementation Timing and Safeguards:** Penalties should only apply after a prohibition is formally in effect and once entities have been given sufficient time to exit affected customers or services. In cases where an exit requires a longer period due to contractual, operational or customer considerations, there should be safeguards to protect reporting entities acting reasonably and in good faith to comply.

Part 2: Amending the Definition of 'Financing of Terrorism'

We support the proposed amendment to the definition of 'financing of terrorism' in section 5 of the AML/CTF Act, to explicitly include offences related to state-sponsored terrorism and ensure alignment with recent changes to the Criminal Code and relevant sanctions regimes.

Consultation questions

8. What concerns, if any, do you have with the proposed amendment to the definition of 'financing of terrorism'?

The ABA has no concerns with the proposed amendment to the definition of 'financing of terrorism' and is supportive of the changes. We note the importance of ensuring that the AML/CTF Act's definition aligns with the designation of state sponsors of terrorism under the Criminal Code Amendment (State Sponsors of Terrorism) Act 2025, as well as with comparable foreign legislation addressing state-sponsored terrorism.

9. Are the amendments to the definition likely to impact your entity's AML/CTF program, noting your existing obligations and the consequential nature of the amendment?

No comment.

Policy Lead: **Emily Gamaroff** (Associate Director, Policy) Emily.Gamaroff@ausbanking.org.au

About the ABA

The Australian Banking Association advocates for a strong, competitive and innovative banking industry that delivers excellent and equitable outcomes for customers. We promote and encourage policies that improve banking services for all Australians, through advocacy, research, policy expertise and thought leadership.