File note

File No: 935364

Author: Domestic Policy

Date: 11 December 2014

Subject: Statutory Review of the AML/CTF Act, Regulations and AML/CTF Rules

- Stakeholder meeting with the Australian Bankers' Association (ABA) held on Friday 14 November 2014 (AUSTRAC Offices-Video/Teleconferencing)

List of participants:

Attorney General's Department: Anthony Coles, s. 22(1)(a)(ii) [redacted]

AUSTRAC: s. 22(1)(a)(ii) [redacted]

Apologies: s. 22(1)(a)(ii) [redacted]

Name	Participants
Australian Bankers' Association	s. 47F(1) [redacted]
Commonwealth Bank of Australia	s. 47F(1) [redacted]
Macquarie	s. 47F(1) [redacted]
Westpac	s. 47F(1) [redacted]
ANZ	s. 47F(1) [redacted]
ING Direct	s. 47F(1) [redacted]
HSBC	s. 47F(1) [redacted]

Introduction

- The discussion was structured around the themes outlined in the AGD Issues Paper of December 2013 and the submissions received from the following:
  - The ABA
  - ING Direct
  - HSBC

- Anthony Coles outlined the timeframes and next steps under the Review. In addition, it was also proposed that there would be further follow up meetings/discussions on key subjects and encouraged the ABA, where appropriate, to lodge further submissions on key topics which could either be addressed immediately (e.g. possible amendments to the AML/CTF Rules) or where further detail and options could be considered (e.g. expansion of reliance at s. 38).

Objects of the AML/CTF Act

- The ABA proposed that in the context of Objectives of the AML/CTF Act, that consideration be given to (a) enshrine the risk-based approach to compliance; and (b) include provision for measuring and assessing the performance of the AML/CTF regime and whether it was achieving its objectives.
  - In response AGD and AUSTRAC submitted it was recognised at a global level that there were limitations, particularly in regard to methodologies, in using quantifiable methods to assess the performance of an AML/CTF regime. The primary constraint is identifying and measuring the social and economic benefits arising from the provision of a robust AML/CTF regime.
  - Examples were provided of where there had been attempts to develop a sound methodology to measure the performance of an AML/CTF regime, notably in the United Kingdom by HM Treasury, Canada (the Logic model) and the UNODC (the 'gravity model' which uses a formula based on a percentage of a country's GDP).
  - It was also noted that the FATF had commenced applying new criteria to assess each country's AML/CTF regime which included two complementary components: First, an assessment of technical compliance against the FATF Recommendations; and second, a comprehensive process to assess the 'effectiveness' of a country's AML/CTF regime using a range of methodologies including qualitative and quantitative measurements.
  - It was noted by s. 22(1)(a)(ii) [redacted] that in addition to the assessment by the FATF of Australia's AML/CTF regime in accordance with its effectiveness criterion, the Government also has a performance management and accountability framework under the *Public Governance, Performance and Accountability Act 2013* (PGPA Act).
  - It was also noted that in the context of the revised FATF assessment criteria, AUSTRAC (particularly from a compliance and supervision perspective) had initiated processes to collect and maintain data to accommodate future FATF assessments of the effectiveness of Australia's AML/CTF regime.

Tranche 2 (DNFBPs)

- The ABA strongly supported the regulation of Tranche 2 reporting entities under the AML/CTF regime.
- s. 47F(1) [redacted] sought clarification in the context of the FATF ME processes of what the consequences and impacts were if a country was found to be non-compliant, for example, the supervision of designated non-financial and businesses and professional service providers (DNFBPs). The ABA also observed that on the basis of the ML/TF risk profile of DNFBPs there was merit in including this category of service providers under the AML/CTF Act.

- Anthony Coles provided the meeting with a brief background on 'Tranche 2' (that is, the supervision of DNFBPs) and the primary issues to be addressed including 'client confidentiality' and 'legal and professional privilege'. Anthony Coles observed that the FATF assessment of Australia was expected to identify the lack of AML/CTF supervision of DNFBPs as a major deficiency. It was considered that this issue, which has also been addressed in submissions to the statutory Review, was a matter for Government policy.
- s. 47F(1) [redacted] considered that there was a nexus between AML/CTF oversight of DNFBPs and the enhanced CDD obligations around beneficial ownership and control. It was considered that the supervision of legal and accounting practitioners were integral to the G8 and G20 aspirations of transparency and the proposal for a national register of beneficial ownership for corporations and trusts.
- s. 47F(1) [redacted] commented that reporting entities (in particular, banks) were increasingly dealing with complex corporate and ownership structures and there were limitations in terms of ensuring robust assurance processes. In this context, legal and accounting professionals were often involved in establishing complex structures. The provision of a national register will assist reporting entities in meeting these obligations.

- s. 47F(1) [redacted] requested clarification on what would be the likely consequences if Australia was found to be non-compliant by the FATF concerning the supervision of DNFBPs, and in particular, the relationship with other countries. s. 22(1)(a)(ii) [redacted] commented that this was not material at this point. She observed that it was important to note that the regulatory and compliance obligations were primarily limited to CDD and SMR reporting. In this regard s. 22(1)(a)(ii) [redacted] suggested that it was important to keep the issue in perspective because ultimately the money transacted by DNFBPs must go through the financial system.
- Anthony Coles reported that the understanding of Tranche 2, the industry sectors and the levels of ML/TF risk had been evolving and maturing since the commencement of the AML/CTF Act. While there was greater insights into DNFBPs this also had to be balanced in the context of the better regulation initiatives and options.

Risk-based Approach Vs. Prescription

- In its submission, the ABA endorsed the risk-based approach to the regulation of the AML/CTF regime in preference to any other regulatory models, in particular, the rule-based (prescriptive) alternative. The advantages included –
  - The risk-based approach encourages reporting entities to undertake ML/TF risk assessments commensurate with their own risk frameworks (because business is best placed to assess their customers, products and channels of service delivery).
  - Avoids the check-list approach to compliance
  - Promotes innovation and enables a more efficient use and application of resources.
- In contrast, the ABA noted that there were issues concerning the AML/CTF Rules which were increasingly prescriptive, for example, refer to the requirement to report TTRs which are considered to be extensive and beyond the scope of the AML/CTF Act. Concern was also raised regarding the level of prescription pertaining to correspondent banking obligations.

- Anthony Coles noted the on-going support for the risk-based approach, and recognised that the focus was on considering smarter and improved approaches to regulation.
- s. 47F(1) [redacted] expressed concerns that contrary to the risk-based approach, the AUSTRC consultation concerning compliance reporting was a prescriptive approach. Using this example, he noted that the ABA supported the principles-based legislative approach in the AML/CTF Act but was concerned that underneath this legal framework there was a high level of prescription.
  - s. 22(1)(a)(ii) [redacted] agreed that while the AML/CTF Act was principles-based, the AML/CTF Rules, which are developed in consultation with the regulated population, included a high level of prescription to provide reporting entities with clarity and certainty and how to implement their reporting and compliance obligations. It was also pointed out that AUSTRAC's regulated population was large and diverse in terms of size and sophistication and that it was difficult to manage a range with different and competing requirements, for example, small business operators favour prescription over the risk-based approach.
  - s. 22(1)(a)(ii) [redacted] considered that there was, however, an opportunity for AUSTRAC to explore options to simplify the AML/CTF Rules in consultation with industry. It was also noted that any consideration of the AML/CTF Rules will also consider the level and nature of guidance.
  - Anthony Coles also observed that the development of the AML/CTF Rules to address the enhanced CDD obligations involved a consultative approach between AUSTRAC and industry. It was also observed that the amending AML/CTF Rules for enhanced CDD obligations involved a level of prescription and this was primarily to meet the requirements of the FATF which required greater clarity and certainty around these obligations. Anthony Coles also observed that there was a tension between managing the expectations of industry (and the FATF) with limiting the burden and impacts on reporting entities in accordance with the better regulation agenda.
- s. 47F(1) [redacted] submitted that the Review provided an opportunity to also consider simplification of the reporting regime. It was considered that it was too prescriptive particularly when contrasted with other regulators such as the ATO. It was also suggested that there were circumstances where the IFTI and TTR could be combined.
  - s. 22(1)(a)(ii) [redacted] advised the meeting that the Government had appropriated an additional $20 million to AUSTRAC under the Counter-Terrorism Foreign Fighter's initiative. Part of the funding was to improve the utility of IFTI reporting and expand the type of information to be submitted (e.g. collection of metadata). The funding was to cover a 4 year period which included implementation and this initiative could provide an opportunity for simplification. It was envisaged that the outcomes of this initiative will also result in law reform.

CDD and Resources – Beneficial ownership

- The ABA and members raised a number of issues concerning the amended AML/CTF Rules for enhanced CDD obligations and a centralised register of beneficial ownership.

- Concerns raised about the amended AML/CTF Rules concerning enhanced CDD obligations (Chapter 4) included the following:
  - Harmonisation of key terms, such as 'reasonable measures', 'risk-based outcomes', 'risk-based systems and controls' because it was not clear what the terms meant and how they differed from one another.
  - Consideration of opportunities to apply simplified due diligence; for example: (a) foreign listed companies/entities and any majority owned subsidiary or any controlled entity (which may be a trust) of such foreign listed company/entity; (b) majority owned companies or controlled entities (which may be a trust) of domestic regulated entities; or (c) majority owned subsidiaries or any controlled entity (which may be a trust) of any foreign regulated entity.
- The ABA in its submission to the Issues Paper sought greater support in the conduct of enhanced CDD measures, and in particular, the identification and verification of beneficial ownership and control of legal structures and arrangements.
  - The ABA advocated the establishment by the Government of a register of beneficial ownership (corporations and trusts) which would simplify the processes and reduces the costs of identification and verification of beneficial ownership and control.
  - It was considered that there were limits concerning the ASIC data base on corporations, particularly where the information was not always up to date and complex corporate structures made the processes even more difficult for reporting entities. This in the view of the ABA was also compounded because there was no national or state register which contained details of persons who controlled or were beneficiaries under legal arrangements (that is, trusts).
  - The ABA considered that there was an appetite to address this gap as evidenced by the global push for greater corporate transparency by the Group of Eight and Group of 20 countries for greater transparency concerning corporate ownership and control, and notably, the recent developments by governments in the United Kingdom and France demonstrated the desire to establish registers of beneficial ownership.
- Anthony Coles indicated that the proposal for a Government managed register or data-base of beneficial ownership was a common theme proposed by stakeholders. While noting the proposal it was also acknowledged that this was a matter for Government policy because it was also broader than AML/CTF obligations. It was noted that the issue of a register of beneficial ownership was a matter wider than the AGD portfolio, and it would also include the Treasury portfolio (which is responsible for the ATO and ASIC).
- s. 47F(1) [redacted] advised that because the information to facilitate the identification and verification of beneficial ownership was largely controlled by Governments (Commonwealth/State/Territory), it was considered that such a register should also be managed and maintained by a government agency.
- The ABA raised concerns that the Document Verification Service (DVS) in its current form was not meeting the requirements of reporting entities. In particular, concern was expressed that it had limited utility where it could not satisfy the requirements for the Electronic Safe Harbour provisions. By way of example, the number of available data-bases was limited. The DVS could not be used to access various data-bases in the Commonwealth, States and Territories including various Registers of Births, Deaths and Marriages, various Road Traffic Authorities (for Drivers' Licences) and the

Department of Immigration and Border Protection. The ABA considered that the value and utility of the DVS would not improve until the range of data sources was expanded. As a consequence of these constraints, reporting entities preferred to subscribe with alternative providers which had negotiated access to a larger number and range of data-bases.

- The comments were noted and Anthony Coles observed that the DVS should be considered as a work-in-progress and that its capacity and range was expected to expand in coming years.

Simplified Due Diligence and Reliance

- A number of issues were raised in the context of expanding the use and application of simplified due diligence (for low risk customers) and the expansion of reliance (s. 38 of the AML/CTF Act). The ABA considered that there was merit in considering options for simplification to avoid duplication in the conduct of CDD obligations on a customer. It was noted that there were certain circumstances where the customer was common but there were different parties to the one transaction.
    - s. 22(1)(a)(ii) [redacted] commented that while simplification could be considered, the specific circumstances had to be addressed to ensure that there was duplication and that the transaction did not involve different parties and hence, different risks.
    - It was noted that the issue of reliance was considered by a number of stakeholders as being one approach towards greater simplification, however, in its current form, section 38 would require realignment to accommodate the expansion of reliance. By way of illustration, section 38 limits reliance to being conducted within Australia. Section 38 would require amendment in order to enable reporting entities to rely on the CDD undertaken on customers by entities in a foreign jurisdiction.
    - s. 22(1)(a)(ii) [redacted] provided an overview of previous work undertaken by AUSTRAC concerning reliance in response to submissions and engagement with AFMA. The work was deferred because of the enhanced CDD consultation processes until the Review. The focus of the AFMA submissions was to expand reliance to enable reporting entities to rely on CDD processes undertaken on customers by the parent or related entities of another entity in a foreign jurisdiction. Under this concept, reliance would be limited to the key financial jurisdictions of: London, Paris, Berlin, New York, Tokyo, Hong Kong, Singapore and indeed New Zealand. It was noted that AFMA has asked that this work be reactivated.
    - It was suggested that the ABA make further submissions on reliance including consideration on the form and processes for reliance noting the various models in other jurisdictions such as the European Union, Singapore and Hong Kong.

Designated Services

- In its submission, the ABA recommended that the Designated Services at Tables 1-4 of section 6 of the AML/CTF Act be expanded to include the following:
    - Tranche 2 (DNFBPs) – see above
    - Digital/virtual currencies

  - New products/services (for example, online/mobile banking services)
- The ABA also proposed that the risk profiles of certain services/products be reviewed to enable regulatory simplification measures. Two examples were provided:
  - In circumstances where the designated service is considered to pose a low ML/TF risk, the CDD obligations be completed *after* the commencement of the designated service; or
  - In certain prescribed circumstances with low risk stored value cards, simplified due diligence procedures apply.
- The ABA noted at present, all designated services are subject to the same levels and application under a risk assessment. One option was to consider a different approach not unlike in the European Union where certain services and the risk assessments are *grouped*, for example, the e-Payment and Payment Services Directives.
- s. 22(1)(a)(ii) [redacted] noted the proposals and requested that the ABA make further submissions on the matters raised and outlining the issues, circumstances and procedures which could apply where certain designated services are considered to pose a lower ML/TF risk.
- The ABA suggested that there was merit in adopting a different approach to prescribing designated services in the current itemised form and adopting a broader approach like New Zealand, the United Kingdom or Canada. It was considered that the current approach of itemising each designated service resulted in a lack of legal certainty and clarity whereas the alternative approach was to cite the relevant Commonwealth/State/Territory legislation which regulated a particular activity.
- In response Anthony Coles commented that it was unlikely that there would be any realignment of designated services from the current approach at section 6 as it would entail a substantive redrawing of the AML/CTF Act.

AML/CTF Act treatment of Tipping-Off/Correspondent Banking

- The ABA submitted that the following matters required redressing under the AML/CTF Act:
  - Tipping-off at section 123; and
  - Definition of correspondent banking at section 5 and Part 8 of the AML/CTF Act and at Chapter 3 of the AML/CTF Rules.

Tipping-off

- The ABA submitted that the provisions at section 123 required revision because in its current form, reporting entities which were a parent, subsidiary or related entity of a corporation domiciled outside Australia could not provide information regarding a customer or any reported suspicious activity. The example was provided by HSBC which can receive information about a customer's suspicious behaviour or activity from its London principal office in accordance with the UK *Proceeds of Crime Act 2002*. In contrast, the Australian branch of HSBC was prevented from passing on information to London.
  - The ABA expressed concern that this legal constraint at section 123 undermined the overarching objective of combating, at a global level, money laundering and terrorism financing.
  - The ABA proposed that section 123 be revised so it was consistent with other jurisdictions where it is permitted, for example, the UK.

- Anthony Coles suggested that the ABA make further submissions on this proposal and outline other legislative frameworks and the exemptions/circumstances under which tipping-off is permitted. In so doing, he also asked that the ABA also consider the concerns of Australia regarding limiting the dissemination of this information, and how its protection, security, privacy and integrity could be protected. By way of illustration, Anthony Coles advised that it was necessary to consider the adverse impacts if the information was misused once it was provided to a related entity in another jurisdiction.

- In the context of tipping-off, the ABA also raised the issue of whether there was merit in making provision under the AML/CTF Act to exit a customer where the customer is suspected of being involved in suspicious activity. The example was provided under the UK *Proceeds of Crime Act 2002* where the National Crime Agency (which replaced SOCA) can direct a reporting entity to either terminate or continue providing a designated service to the customer.
  - The issue was discussed in further detail and it was noted under the risk-based approach that the reporting entity could determine how it could best address the issue having regard to the particular circumstances and the designated services involved. Clarification was also raised on whether the matter had been formally raised with ASIC which was responsible for administering the *National Credit Act 2010*.

Correspondent Banking

- The ABA submitted that the definition of correspondent banking should be aligned with the revised Wolfsburg Principles and that the requirements be less prescriptive (for example, the approach to Nostro/Vostro).
- The ABA agreed to provide further submissions on revising correspondent banking and in particular, an outline of how it could be accommodated using the UK and Hong Kong examples. By making the matter less prescriptive and the definition broader, it would address and recognise that there are different approaches regarding correspondent banking relationships.

Other

- There was a brief discussion on the following additional matters:
  - Whether AUSTRAC has an appropriate suite of enforcement powers including ensuring that AML/CTF programs, including the conduct of risk-assessment and management strategies were enforceable.
  - The AUSTRAC stakeholder consultation on revised compliance reporting.
  - Harmonisation of CDD obligations under the AML/CTF Act with the NSW mortgagee identification and verification obligations. It was noted in NSW that the requirements impose a greater obligation than the AML/CTF Act.
  - FOI exemptions, in particular, where commercial and sensitive information is submitted by a reporting entity which may be accessed under the FOI Act.
  - Electronic reporting: If there was a mandatory requirement to submit all documents and reports electronically it would not be supported by the ABA.

File note

File No: 935810

Author: Domestic Policy

Date: 15 December 2014

Subject: Statutory Review of the AML/CTF Act, Regulations and AML/CTF Rules

- Stakeholder meeting with the Australian Financial Markets Association (AFMA) held on Friday 14 November 2014 (AUSTRAC Offices-Video/Teleconferencing)

List of participants:

Attorney General's Department: Anthony Coles, s. 22(1)(a)(ii) [redacted]

AUSTRAC: s. 22(1)(a)(ii) [redacted]

Apologies: s. 22(1)(a)(ii) [redacted]

Name	Participants
Australian Financial Markets Association	s. 47F(1) [redacted]
Western Union	s. 47F(1) [redacted]
Bank of America Merrill Lynch	s. 47F(1) [redacted]
Westpac	s. 47F(1) [redacted]
Morgan Stanley	s. 47F(1) [redacted]
ANZ	s. 47F(1) [redacted]
NAB	s. 47F(1) [redacted]
UBS	s. 47F(1) [redacted]
AMP	s. 47F(1) [redacted]

Introduction

- The discussion was structured around the themes outlined in the AGD Issues Paper of December 2013 and the submissions received from AFMA.

- Anthony Coles outlined the timeframes and next steps under the Review and the interface with the outcomes of the 4th Round FATF Mutual Evaluation (ME) of Australia. It was envisaged that the outcomes of the mutual evaluation, due to be reported in February 2015, would be used to identify the key regulatory gaps in Australia's AML/CTF regime. Additionally, it was considered that the statutory Review should also be considered in the context of other major policy guideposts and processes including the Government's deregulation agenda.
- s. 47F(1) [redacted] advised that the AFMA agreed the ME and statutory Review were complementary and should be conducted alongside one another and that it was considered that industry would accept the outcomes and changes precipitated by the FATF outcomes.

AFMA Submission

- s. 47F(1) [redacted] provided a précis of the key issues in AFMA's submission, noting that the items had previously been discussed or raised with AUSTRAC.

Risk-based Approach

- AFMA supported the risk-based approach. AFMA, however, provided a qualification noting that subject to resources and levels of sophistication of the reporting entity it was important in these situations to achieve an appropriate balance between the levels of prescription required in the context of the risk-based approach.
    - In citing the enhanced CDD Rules as an example s. 47F(1) [redacted] noted that it was often a judgement call on achieving the necessary balance between the risk-based approach and the level of prescription.

Scope of the AML/CTF regime

- AFMA proposed that it was necessary that the AML/CTF regime was flexible and adaptable to changing trends, ML/TF risk-profiles and new products and services, for example, virtual/crypto currencies.
- AFMA considered that the increase in designated services provided to Australian resident customers through the Internet by entities domiciled off-shore was an area which required redress. These entities were outside the regulatory framework of the AML/CTF Act because they did not meet the geographical link test at subsection 6(6) of the AML/CTF Act. While this category of reporting entity had a competitive advantage over Australian reporting entities because they did not have to comply with AML/CTF obligations (including reporting), they also posed a potential ML/ TF risk.
    - The meeting noted that the theme of regulating off-shore remittance providers was a theme raised by a number of stakeholders. Despite the rationale for regulating off-shore based remitters, the form of the regulatory framework and strategies for imposing compliance and enforcement remained unclear unless it involved a form of licensure and the participation of another sector, for example, banks not provide banking facilities unless the entity is registered with AUSTRAC.
    - It was suggested that AFMA make further submissions on regulatory and reporting options to expand the AML/CTF regime to accommodate off-shore remittance providers.

- AFMA submitted that where there was limited or very low ML/TF risk concerning an existing designated service there was scope for modification/exemption and/or regulatory simplification to reduce the compliance burden. By way of example it was submitted that the use of low $ threshold/s on stored valued cards could result in the provision of simplified CDD.
- AFMA supported the extension of the AML/CTF regime to accommodate Designated Non-Financial Businesses and Professions(DNFBPs).

Exemptions/Modifications

- AFMA considered that there was considerable scope to expand the application of the following:
    - Reliance, in particular, where it involved an overseas resident customer
    - Simplified Due Diligence, in particular where it was demonstrated that there was evidence that the scenario or designated service posed a limited or low ML/TF risk. It was also considered that the scope of simplified due diligence could be expanded under the enhanced CDD obligations.

Reliance

- AFMA considered the expansion of reliance to be a major issue as it had the potential to reduce the compliance burden on its membership.
    - AFMA referred to previous submissions to AUSTRAC concerning the expansion of reliance because in its current form it had limited application, and in particular, could not be applied to CDD requirements for customers in a foreign country. Section 38 will require legislative amendments to redress its technical-legal shortcomings and to enable reliance to be undertaken where a customer resides in another country (comparable jurisdiction – see ASIC).
    - Reference was made to the previous interaction with AUSTRAC on reliance before being deferred in 2012. It was considered that there was merit in reviewing and reactivating the proposal which would limit the conduct of reliance to the following jurisdictions which are recognised financial centres: United Kingdom, Germany, France, United States, Japan, Singapore, Hong Kong and also New Zealand.
    - AFMA agreed to further consider its approach to reliance and make a further submission to the Review.

Simplified Due Diligence

- AFMA agreed to make further submissions on options to expand simplified due diligence.
- It was noted that other key stakeholders (e.g. the ABA) proposed further simplification to the Chapter 4 AML/CTF Rules to reduce the compliance burden such as the harmonisation of key terms, introducing simplified due diligence measures for majority owned subsidiaries of a listed foreign public company; majority owned companies controlled by a domestic entity etc.
- It was also suggested that there may be provision to consider options to on-board customers where the designated services which are limited in ML/TF risk prior to completion of the CDD processes. The concept could be structured for example, to

allow a total of 3 transactions (depending on the designated service) before all CDD obligations had been satisfied.

- AFMA agreed to review and make further submissions on this matter.

Central Register – CDD & Beneficial Ownership

- In its submission, AFMA supported a proposal to enable a reporting entity to collect KYC information on legal entities and legal arrangements from an independent source other than the customer.
- AFMA advised that there were a number of factors which were driving a push for a central register containing beneficial ownership including a desire to control the costs of compliance, trust and certainty in the information. It was noted that while it was possible to obtain the relevant information from a customer, the ability and sources available to verify the information was of great concern to reporting entities. This was also compounded because there were no reliable or independent sources to verify information obtained from a customer concerning trusts.
- AFMA submitted that most of its members rely on the outsourced service providers and these processes are costly and do not always produce desirable and sound outcomes.
  - AFMA noted that it has previously raised with AUSTRAC its concerns regarding the limitations of having to rely on the ASIC database. The information is often out-of-date or inaccurate. In this context s. 47F(1) [redacted] also observed that ASIC is not obliged to maintain its data-base.
- It was considered that the Document Verification System was limited in its utility if the reporting entity was engaged as a 'wholesaler' because the clients were primarily corporations and not individuals. It was further submitted that the DVS only complements the CDD processes because it did not remove or replace the requirement to collect customer identification information.
  - UBS also recommended that the threshold for verification in the DVS be lowered so that reporting entities can present name, date of birth and address, rather than ID information that could only have already been collected from the customer and/or original documents (e.g. passport number). It was submitted that the DVS should (at least) allow reporting entities to meet the safe harbour provisions in the AML/CTF Rules.
- In the context of future reforms, a question was raised on the timelines for the CDD reforms precipitated by the requirement to comply with the FATF standards and in particular, that industry was not aware of the issues until the release of the initial discussion paper. AFMA suggested that there was merit in AGD/AUSTRAC sharing the sanitised outcomes of FATF meetings and key issues with industry on a regular basis.
  - Anthony Coles outlined the background and circumstances to the CDD enhancements and noted that the issue was a matter which Australia had been engaging with the FATF for some time since the Third Round Mutual Evaluation in 2005. It was noted that the FATF ultimately rejected Australia's submissions and mandated that the CDD obligations around beneficial ownership and control and identification and verification of politically exposed persons (PEPs) had to be addressed immediately.

   - Anthony Coles indicated that the circumstances were unique and the response to the non-compliance was necessary to prevent the FATF escalating any action against Australia. There were also broader policy concerns within Government regarding the regulatory and compliance impacts of the reforms. The concerns regarding timelines for introducing and implementing reforms, and consideration of strategies to apprise industry of outcomes in the FATF was noted.
   - AFMA submitted that the implementation of major reforms be undertaken in a manageable manner to enable reporting entities to adequately prepare and resource the obligation. In this context, it was noted that the enhanced CDD obligations posed a significant challenge for reporting entities to manage including the consequential impacts on resources and budgets.
   - AGD and AUSTRAC agreed to review the options for informing industry of relevant issues and outcomes under consideration by the FATF; however, it was also recognised that the deliberations by the FATF were conducted in-camera and it was also important that Australia respected the confidentiality of proceedings.
- AFMA also outlined the issues underlying the policy principles that supported the introduction of the enhanced CDD obligations. While acknowledging that the policy principles were developed to enable a transition to the enhanced CDD obligations, this process did not assist AFMA members particularly in the context of the wider obligations under financial regulation.

Correspondent Banking and Tipping-Off

- AFMA expressed concerns with the following:
   - The definition of *correspondent banking* at section 5 of the AML/CTF Act ; and
   - The operation of the tipping-off provisions at section 123 of the AML/CTF Act.

Correspondent Banking

- It was submitted that the definition of correspondent banking was not functional or indeed practicable, particularly in regard to Nostro/Vostro accounts, and that it should be realigned.
   - AFMA submitted that the definition in its current form was ambiguous and the obligations on reporting entities were unclear and uncertain.
   - The ambiguity could in part be addressed through outlining AUSTRAC's expectations in guidance and to address the associated risks.
- It was acknowledged that similar issues were raised by the ABA and it was requested that AFMA make further submission on this issue.

Tipping-Off

- AFMA recommended that the tipping-off provisions at section 123 be revised noting that it was not possible for an Australian-based reporting entity to provide information of a suspicious nature to a global parent or subsidiary which is domiciled in a foreign country. This added further complexity where an entity which operates in multiple AML/CTF jurisdictions is obligated to report suspicious matters to another entity in the corporate group located in a foreign country if the customer conducts transactions in the other jurisdiction/s.

- To emphasise the issue UBS noted that it operates in multiple jurisdictions and while the Australian operation can be tipped-off from all other jurisdictions where UBS and its subsidiaries operate, the Australian operation cannot tip-off any UBS subsidiaries in any other jurisdiction.
    - A breach of the tripping-off provisions at section 123 was a criminal offence.
    - AFMA submitted that the prohibition on tipping-off was inconsistent with global best practice.
- Anthony Coles outlined the background and the issues behind the prohibition noting that the primary concerns related to the privacy, security and integrity of the information provided to a foreign subsidiary or parent or related entity. It was not possible to impose adequate and enforceable safeguards when the information goes off-shore and it is in effect out of the regulatory control of AUSTRAC.
    - AFMA acknowledged the issues and concerns while highlighting the importance of balancing the broader policy issues and tensions. It was also recognised that the issues faced by Australia were also a consideration for those countries where it was permitted within a corporate group. AFMA also indicated that the ability to share information within an economic group (that is, a foreign parent company; subsidiary or related entity) was an integral component to combating serious crime, money laundering and terrorism financing.
    - AFMA requested that the matter be given further consideration and to consider under what conditions and caveats could tipping-off be permitted.
- AFMA agreed to make further submissions on this issue and provide examples of how tipping-off was addressed in other jurisdictions.

Other

AUSTRAC Industry Contribution

- While it was acknowledged that the Government's AUSTRAC Industry Contribution initiative announced in the Federal Budget 2014 was the subject of separate forum and processes, AFMA expressed its objections to the underlying principles behind this new obligation.

Remittance and Bank De-risking

- Anthony Coles provided an update on recent developments concerning the remittance sector and recent decisions by banks to close the accounts of these customers in response to AML/CTF and sanctions risk and compliance.

Australia Post and CDD

- AFMA raised its concern that where Australia Post operates as an agent on behalf of a number of financial institutions, it does not apply a consistent standard in accordance with the AML/CTF legal framework.

Item 54

- AFMA raised an issue regarding the duplication of CDD requirements where they relate to CDD being undertaken by licensed financial advisers in the trading of securities. It was suggested that this duplication be removed. AFMA noted that this was raised during the CDD consultation processes.
  - s. 22(1)(a)(ii) [redacted] noted that it is not aware of any work that is currently being undertaken on this issue and that it would be best addressed if AFMA provided further information and made an application for an exemption.

DBGs

- AFMA expressed concern that there is a shift away from the DBGs concept and noted that there seems to be an increasing expectation for individual attestations from each DBG member. This comment was made in relation to the CDD policy principles which required each board member of the DBG to approve the plan.

AUSTRAC Compliance Report

- AFMA considered that the enhanced compliance reporting process asks for information beyond the scope of the legislation. This has implications for the legal protection of information that is not provided under a relevant provision of the Act.