

7 February 2017

Financial Crime Section

Transnational Crime Branch
Criminal Justice Policy and Programmes Division
Attorney-General's Department
3-5 National Circuit
BARTON ACT 2600

Dear Sir/Madam,

RE: Consultation Paper - Accountants: a model for regulation under Australia's anti-money laundering and counter-terrorism financing regime

Accounting Professional & Ethical Standards Board Limited (APESB) welcomes the opportunity to make a submission on the Attorney-General's Department's *Consultation Paper – Accountants: a model for regulation under Australia's anti-money laundering and counter-terrorism financing regime*.

APESB and the co-regulatory environment for the Australian accounting profession

APESB is governed by an independent board of directors whose primary objective is to develop and issue, in the public interest, high-quality professional and ethical pronouncements. These pronouncements apply to the members of the three major Australian professional accounting bodies (CPA Australia (CPAA), Chartered Accountants Australia and New Zealand (CA ANZ) and the Institute of Public Accountants (IPA)).

The Australian accounting profession exists in a co-regulatory environment, which involves APESB, the three professional accounting bodies and applicable regulatory authorities (e.g. ASIC). As the independent standards setter, APESB's role is to set the standards and the Board's mandate does not cover compliance and enforcement.

The three professional accounting bodies and regulatory authorities are responsible for monitoring and enforcing compliance of professional accountants including conducting disciplinary actions for breaches of these standards.

Overall comments

APESB commends the Government for undertaking this initiative to strengthen Australia's anti-money laundering and counter-terrorism financing (AML/CTF) regime in order to consider an efficient and effective regulatory framework. We appreciate that the Government has conducted a statutory review of the *Anti-Money Laundering and Counter-Terrorism Financing Act 2006* (the AML/CTF Act) and associated Rules and Regulations.

APESB in principle supports the primary aims of the review recommendations which are intended to safeguard the public interest, protect the Australian community and financial system and simplify the AML/CTF Act and associated Rules.

In particular, we agree that any regulations introduced from this initiative should not be applied to internal professional accountants in organisations who provide services to an employer.

In respect of establishing an appropriate AML/CTF model for regulating accountants in public practice, APESB is of the view that the following matters will require careful consideration:

1. *The potential duplication of existing and proposed professional and ethical obligations*

APESB's professional & ethical standards have already established requirements in respect of:

- Performing appropriate enquiries in respect of the client's business activities during the client acceptance process. As part of this process professional accountants need to ascertain whether the client is involved in any illegal activities such as money laundering;
- A professional accountant must assess a prospective client's integrity before accepting an engagement;
- A professional accountant must perform an ongoing evaluation of whether to continue to provide services to the client and this involves taking into consideration whether the client is involved in illegal activities; and
- When dealing with Client Monies a clear prohibition on not to be involved with monies that are associated with any money laundering transactions or proceeds of crime or terrorist financing.

As far as we are aware, Australia is the only country where the accounting professional & ethical standards mandate that accounting firms apply the quality control framework (including the client acceptance and continuance requirements) firm wide for all services. This ensures all service offerings of the firm are considered (e.g. assurance, tax, consulting and transaction advisory services). This requirement has been in place in Australia for over 10 years. In most other jurisdictions, the quality control standard is only mandated in respect of assurance services.

The professional obligations noted above are contained in the following APESB pronouncements:

- [APES 110 Code of Ethics for Professional Accountants](#) (APES 110);
- [APES 320 Quality Control for Firms](#) (APES 320);
- [APES 325 Risk Management for Firms](#) (APES 325); and
- [APES 310 Dealing with Client Monies](#) (APES 310).

APESB has also issued an exposure draft in December 2016 to revise APES 110 to incorporate the provisions of *Responding to Non-Compliance with Laws and Regulations* (NOCLAR), issued by the International Ethics Standards Board for Accountants (IESBA).

These proposed revisions are intended to strengthen the professional framework for accountants to respond to NOCLAR committed by their clients or employers. Under this proposed professional & ethical standard, professional accountants are required to consider actual or suspected breaches of laws and regulations which include AML/CTF laws and take appropriate action to deal with these instances.

In certain circumstances, the professional accountant will be allowed to set aside the fundamental ethical principle of confidentiality under the Code and report a matter to an appropriate regulatory authority if it is in the public interest. The public comment period for the APESB Exposure Draft closes on 15 March 2017.

Accordingly, due to the existing professional obligations noted above and the proposed NOCLAR Standard, an effective and efficient AML/CTF framework developed by the Government should take into account these existing and proposed obligations imposed on professional accountants in public practice and if possible leverage off these existing professional requirements. Where the Government believes that a legislative requirement needs to be introduced which will overlap with an existing professional requirement, then we believe that these requirements should be consistent in order to minimize the regulatory burden.

2. *The potential duplication of reporting to AUSTRAC by financial institutions and accountants*

Accountants are active participants in the financial system and regularly make use of the many services offered by financial institutions when providing professional services to their clients. In doing so, they rely on the financial institutions' robust systems and processes designed inter alia, to fulfill the financial institutions' AML/CTF obligations. For example, accountants use documents issued by banks to verify the activities of clients or determine the legitimacy of material client transactions.

In the absence of any suspicion of an illegal act occurring, professional accountants in public practice should not be required to report all transactions they deal with that are above thresholds specified in the AML/CTF legislation. This is likely to lead to duplication of reporting to AUSTRAC as accountants would usually be dealing with client monies through accounts held at a financial institution (i.e. the accountant and the bank will be reporting on the same transaction). We believe that such a reporting obligation on the part of the professional accountant should operate on an exception basis.

Therefore the proposed AML/CTF model for regulating accountants should enable them to continue to rely on and leverage off the financial institutions' existing systems and processes, but provide the opportunity to the professional accountant to report a matter if they become aware of any suspicious activity. In these circumstances the relevant AUSTRAC and legislative protection must be provided to the professional accountant.

3. *Applicability of requirements to accountants that are not members of professional accounting bodies*

The applicability of professional and ethical obligations to accountants who are not members of CPAA, CA ANZ and IPA is an issue that has been previously considered before by the APESB, and government bodies such as Treasury, ATO and ASIC.

In the past this issue has been addressed through incorporating an obligation to follow APESB pronouncements into specific legislation or regulation. This effectively means that if an accountant is providing relevant services to the public then they must comply with these professional standards regardless of whether they belong to a specified professional body.

For example, the [Superannuation Industry \(Supervision\) Regulations](#) for SMSF auditor independence requirements, and Auditing Standard [ASA 102 Compliance with Ethical Requirements when Performing Audits, Reviews and Other Assurance Engagements](#) for audits or reviews conducted under the *Corporations Act 2001* both require the professional and ethical requirements in APES 110 to be compiled with for registered company auditors and SMSF auditors.

If the Government introduces AML/CTF legislation or regulations for accountants, then in a similar manner to the above, the Government could consider appropriate amendments to laws and regulations to require compliance with applicable APESB Standards for professional accountants who provide services to the public.

It should be noted that in some jurisdictions this issue has been overcome by regulating who can call themselves an accountant.

Specific comments

APESB responses to specific questions outlined in your consultation paper are included in Appendix A for your consideration.

Concluding comments

As noted above, we believe that there are a number of existing and proposed requirements for professional accountants that deal with AML/CTF risks. Further the vast majority of financial transactions a professional accountant is associated with is most likely to occur via a financial institution which already has existing systems and procedures to deal with AML/CTF risks.

Accordingly, we strongly believe that any proposed regulatory model for accountants should consider the existing professional requirements and systems/processes in place in financial institutions.

Where the Government believes that a legislative requirement needs to be introduced to strengthen the current arrangements and it overlaps with a professional requirement, then we believe that these should be consistent in order to minimize the regulatory burden on professional accountants.

Should you require additional information, please contact APESB's Chief Executive Officer, Mr Channa Wijesinghe at channa.wijesinghe@apesb.org.au.

Yours sincerely



The Hon. Nicola Roxon
Chairman

APPENDIX A

APESB's Specific Comments

APESB's responses to the specific questions raised in the consultation paper are as follows:

Question 4. To what extent are the FATF's customer due diligence obligations already reflected in existing regulation (including self-regulation) for Australian accountants?

APESB notes that FATF's customer due diligence (CDD) obligations aim to ensure that "individual customers are who they claim to be" and for a non-individual customer (e.g. a business), that the "customer exists and their beneficial ownership and/or control details are known".

APESB standards place mandatory professional and ethical obligations on professional accountants who are members of CPAA, CA ANZ and IPA (Members) that are consistent with the aim of the FATF's CDD obligation. Within a number of APESB standards as enumerated below, there are specific procedures that Members need to perform when accepting and continuing a client relationship or engagement.

- APES 110 is based on the international *Code of Ethics for Professional Accountants* issued by the IESBA and is the primary platform to regulate the professional and ethical conduct required of Members.

APES 110 specifies in Section 210 *Professional Appointment* that Members in public practice, as part of their client and engagement acceptance procedures, should determine whether prospective clients are associated with any illegal activities (for example, money laundering).

In Section 270 *Custody of client Assets*, APES 110 requires Members in public practice with engagements that involve custody of client assets to conduct appropriate inquiries about the source of those assets. It states that if clients' assets are derived from illegal activities such as money laundering, then this creates a threat to a Member's compliance with the fundamental principles of professional behavior and that the Member must take action to deal with this threat. A final outcome of this process may mean that the Member must decline the engagement.

- APES 320 requires accounting firms to establish and maintain a system of quality control designed to provide them with reasonable assurance that the firms and their personnel are complying with professional standards, relevant ethical requirements and applicable legal and regulatory requirements.

APES 320 (in paragraphs 38 and 40) specifically mandates accounting firms to establish policies and procedures that will provide them with reasonable assurance to *only* accept or continue client relationships and engagements where they have appropriately considered their clients' integrity including matters that may indicate involvement in money laundering and other criminal activities.

- APES 325 specifies the mandatory requirements for accounting firms to establish, maintain and monitor a risk management framework and related policies and procedures to meet its public interest obligations. Accounting firms are also required (paragraph 3.3) to embed in their risk management frameworks their quality control policies and procedures developed in accordance with APES 320 to facilitate compliance with both APES 325 and APES 320. Accounting firms should therefore be considering AML/CTF risks to the firm as part of this risk management framework.
- APES 310 contains explicit requirements relating to AML/CTF. APES 310 (paragraphs 4.11 and 4.12) establishes a mandatory obligation on Members in public practice not to be involved in any money laundering transactions or use the proceeds of crime or terrorist financing when providing services relating to dealing with client monies (holding, receiving or disbursing client monies that have come under a Member's control).

Question 5. To what extent do existing mechanisms that allow for regulatory oversight of accountants mitigate any AML/TF risks that may be posed by the services accountants provide?

APESB appreciates the significant roles that both regulators and professional accounting bodies (CPAA, CA ANZ and IPA) play in conducting the quality review programs to monitor and enforce compliance amongst professional accountants.

It should be noted however that APESB's professional and ethical standards only apply to members of CPAA, CA ANZ and IPA. There are other accounting practitioners who are not members of these professional accounting bodies and therefore not subject to the same stringent professional and ethical obligations and mechanisms such as the ongoing quality review program in the co-regulatory environment.

To achieve consistency in the application of AML/CTF regulations, regardless of whether accountants are Members of the accounting bodies or not, APESB proposes that the Government consider incorporating existing professional standards by reference in applicable legislation and regulatory requirements.

Question 10. How would AML/CTF obligations impact on the client confidentiality obligations of accountants?

One of the fundamental ethical principles specified in APES 110 (Code of Ethics) is confidentiality, which requires Members to protect their clients' or employer's confidential information.

Under the proposed standard *Responding to Non-Compliance with Laws and Regulations* (NOCLAR) provisions, reporting matters to relevant authorities will not be considered a contravention of the Members' confidentiality obligations if it is deemed to be in the public interest. Laws that deal with money laundering, terrorist financing and proceeds of crime are included in the list of laws addressed in the proposed NOCLAR provisions.

The NOCLAR provisions, which will apply to Members in public practice and in business, set the conceptual framework for responding to NOCLAR or suspected NOCLAR committed by a client or employer and provides requirements and guidance on how Members should respond

in these circumstances. When Members become aware of NOCLAR or suspected NOCLAR, the proposed provisions require Members to alert management or those charged with governance.

Importantly, if client management or those charged with governance do not take appropriate action Members are obligated to take further action, such as reporting matters to an appropriate regulatory authority in circumstances where it is deemed to be in the public interest.

Question 11. What other aspects of the accountancy sector would be impacted by AML/CTF obligations?

It is important to recognise that in the current environment, Members in public practice commonly outsource certain parts of their services to other organisations in and outside of Australia. The impact of AML/CTF obligations, and their strict enforcement, when accounting services are outsourced to other organisations, particularly outside of Australia, need to be given appropriate consideration.

APESB has issued a Guidance Note APES GN 30 *Outsourced Services* that provides authoritative guidance to Members in public practice who either provide or utilise outsourced services in or outside of Australia.