Response to consultations on a model for regulation under Australia's anti-money laundering and counter-terrorism financing regime

January 2017

Opening remarks

Context and background

We would like to thank the Attorney-General's Department for the opportunity to provide input into these important consultations on "a model for regulation under Australia's anti-money laundering and counter-terrorism financing regime" for each type of Designated Non-Financial Business and Profession (DNFBPs).

AML/CTF over recent years has become a topic of increased focus around the world, as organisations respond to increasing expectations from regulators and the public in general. There is also an increased awareness that all parts of the private sector should play an active role in deterring, detecting, and reporting ML/TF, and the predicate offences that give rise to money laundering and terrorism financing.

This focus has been supported by the activities of the FATF, in particular the changes to the FATF Recommendation in place since 2012, and their 4th round mutual evaluation process, as well as the targeted international activity on tax crimes, including the issues raised by the publication of the "Panama Papers".

DNFBPs have, wittingly and unwittingly, long been a conduit for money laundering, terrorist financing, and other criminal activity. It has been internationally recognised since 2003 that Designated Non-Financial Businesses and Professions (DNFBPs) should be brought into AML/CTF regimes.

The inclusion of DNFBPs into AML/CTF regimes is therefore long overdue. It can also be argued that the non-inclusion of DNFBPs from AML/CTF regimes places a disproportionate burden on current businesses subject to AML/CTF law and regulation.

The non-inclusion of DNFBPs also hampers a country's ability to put in place a comprehensive, proportionate and effective AML/CTF regime based on all money laundering and terrorist financing risks, as required by the FATF.

The use of DNFBPs to facilitate criminal activity, such as bribery and corruption and tax crimes, has recently become a higher priority on international and domestic political agendas. The role of some types of DNFBP in tax avoidance and evasion schemes has also been highlighted, not least by the Panama Papers.

The 2003 FATF Recommendations established customer due diligence and record keeping requirements for DNFBPs. However, due to a growing understanding of the role of DNFBPs as "gatekeepers" to parts of the financial system, and the emergence of continued and clear evidence of the role that DNFBPs play in money laundering, terrorist financing and other criminal offences, the FATF's requirements on DNFBPs were expanded.

The 2012 FATF Recommendations set out clear requirements for DNFBPs. Specifically, Recommendation 22 (DNFBP Customer Due Diligence); Recommendation 23 (DNFBP Other Measures); and Recommendation 28 (The Regulation and Supervision of DNFBPs).

However, to date the lack of implementation of the FATF requirements for DNFBPs by full FATF member countries appears to be a continued and systemic weakness in the global AML/CTF regime. The FATF 4th round mutual evaluations of Australia, Canada, Singapore, Switzerland, and the United States identify deficiencies in bringing DNFBPs into AML/CTF regimes and the supervision of DNFBPs in those countries.

Our research on the most recent mutual evaluations for each of the 34 full members of the FATF establishes:

- 14 full FATF member countries are identified as being completely Non-Compliant with the FATF's DNFBP's recommendations at their last mutual evaluation;
- Of the FATF full member countries 31 out of 34 have yet to fully extend their AML/CTF regime to DNFBPs; and
- 25 out of 34 full FATF member countries do not have in place the required supervisory arrangement for DNFBPs.

Whilst this research focuses on the 34 full member countries of the FATF, analysis of the recent mutual evaluations completed on region bodies indicates that the lack of implementation issue could be representative of countries globally.

It is against this backdrop that Australia intends to put in place a regime to regulate DNFBPs.

This is in part driven by the findings of Australia's 2014/15 FATF mutual evaluation. It is important to note that under FATF norms, Australia must formally respond to the FATF mutual evaluation findings within two and a half years of the report being published (before mid-2017), and that the FATF will undertake a follow up visit to assess Australia's progress in addressing the weaknesses found by the mutual evaluation five years after the mutual evaluation.

As a result, we recognise that the Attorney-General's Department and AUSTRAC have a finite time to address the 84 recommendations resulting from the statutory review report published in April 2016, which reflect and build upon the 2014/15 FATF mutual evaluation findings.

The non-inclusion of DNFBPs is widely recognised as a fundamental weakness in Australia's AML/CTF regime, which needs to be addressed as a matter of urgency. The continued non-inclusion of DNFBPs, is not an option when assessed against any reasonable measure.

We appreciate that regulation of this kind will be alien to many types of DNFBP, and that some DNFBP sectors will resist AML/CTF regulation despite clear and unequivocal evidence of their industry playing a role in money laundering and terrorist financing.

It is our experience that the same arguments were raised by some of the businesses included Tranche 1 and by DNFBPs in other jurisdictions when they were brought into the AML/CTF regime. However, once part of the AML/CTF regime organisations realise the benefits to their business and its reputation as well as to society in general.

Our extensive work with Tranche 1 reporting entities since the implementation of the AML/CTF Act in 2007, and working internationally with businesses within regulated sectors, including DNFBPs, underlines the importance of Australia putting in place an appropriate AML/CTF regime proportionate to the ML/TF risks posed by each type of DNFBP.

Cost vs Benefit

Part of the work on proportionality is consideration of the cost versus the benefit. Whilst we note that cost/benefit analysis will be completed post this consultation, we anticipate that cost will be a significant dimension raised by others as part of their responses to this consultation. We have undertaken some work that will hopefully add to the debate and dispel some myths about how much putting in place an appropriate, proportionate, pragmatic and risk sensitive AML/CTF regime will cost at an industry and individual reporting entity level for each type of DNFBP.

Leveraging the work undertaken by New Zealand in September 2016, ahead of them bringing DNFBPs into their AML/CTF regime, which concisely sets out the business compliance impacts for each type of DNFBP, it is clear that the cost could be significant.

Establishment costs

Deloitte, who were commissioned by the Ministry of Justice in New Zealand to undertake the analysis, estimate that first year establishment costs across the circa 7,600 DNFBPs that will be brought into the New Zealand regime will be between $68.30 million and $297 million or $$8,980.00 to $39,000.00 per business.

To provide greater clarity the breakdown of costs per DNFBP type in New Zealand at the lower end estimates are:

DNFBP type (Number of anticipated reporting entities)	**Establishment Cost**	**Per Regulated Entity**
Legal Practitioners and Conveyancers (1,572)	$15.29 million	$9,725.00
Accountants (2,223)	$24.13 million	$10,850.00
Real Estate Agents (1,006)	$12.63 million	$12,550.00
High Value Dealers (2,802)	$20.21 million	$7,200.00

*Note – figures are converted from NZ$ to AU$ and rounded for ease of illustration.

The breakdown of costs per DNFBP type in New Zealand at the higher end estimates are:

DNFBP type	Establishment Cost	Per Regulated Entity
Legal Practitioners and Conveyancers	$76.85 million	$48,800.00
Accountants	$96.71 million	$43,500.00
Real Estate Agents	$33.25 million	$33,000.00
High Value Dealers	$72.67 million	$25,900.00

*Note – figures are converted from NZ$ to AU$ and rounded for ease of illustration.

We believe that the median between the lower and higher estimates is more a realistic estimate. The breakdown of costs per DNFBP type in New Zealand at the median are:

DNFBP type	Establishment Cost	Per Regulated Entity
Legal Practitioners and Conveyancers	$45.57 million	$29,000.00
Accountants	$60.42 million	$27,000.00
Real Estate Agents	$22.94 million	$23,000.00
High Value Dealers	$44.44 million	$16,500.00

*Note – figures are converted from NZ$ to AU$ and rounded for ease of illustration.

To put this into the Australian context we have extrapolated the New Zealand cost estimates and estimated the Australian DNFBP numbers by DNFBP type.

As a result, we estimate that establishment costs across all of the approximately 101,000 DNFBPs could be between $1.045 billion and $3.8 billion, or between $10,350.00 and $37,000.00 per business.

To provide greater clarity the breakdown of costs per DNFBP type in Australia at the lower end New Zealand cost estimates are:

DNFBP type (Number of anticipated reporting entities)	Establishment Cost	Per Regulated Entity
Legal Practitioners and Conveyancers (20,076)	$195.24 million	$9,725.00
Accountants (32,573)	$353.41 million	$10,850.00
Real Estate Agents (38,439)	$482.40 million	$12,550.00
High Value Dealers (Circa 10,000)	$72 million	$7,200.00

*Note – figures are rounded for ease of illustration.

The breakdown of costs per DNFBP type in Australia at the higher end cost estimates are:

DNFBP type	Establishment Cost	Per Regulated Entity
Legal Practitioners and Conveyancers	$979.70 million	$48,800.00
Accountants	$1.416 billion	$43,500.00
Real Estate Agents	$1.268 billion	$33,000.00
High Value Dealers	$259 million	$25,900.00

*Note – figures are rounded for ease of illustration.

The median between the lower and higher estimates is more a realistic estimate. The breakdown of costs per DNFBP type in Australia at the median are:

DNFBP type	Establishment Cost	Per Regulated Entity
Legal Practitioners and Conveyancers	$582.2 million	$29,000.00
Accountants	$879.5 million	$27,000.00
Real Estate Agents	$884 million	$23,000.00
High Value Dealers	$165 million	$16,500.00

*Note – figures are rounded for ease of illustration.

As a result, we estimate that establishment costs across all approximately 101,000 DNFBPs could be $2.5 billion, or $24,800.00 per business.

The analysis undertaken for the New Zealand MoJ also identifies that these costs will be split between internal costs within a business (74%) and external costs (26%) to support getting compliant.

In our experience that cost can be split further between development and implementation, with approximately 70% of costs resulting from development of a business' AML/CTF program and 30% resulting from implementing the controls specified in the AML/CTF program and associated documents.

Based on this 70%-30% split, the following table breaks down the costs for development and implementation at an industry level for Australia using the median cost estimate are:

DNFBP type	Development Cost (70%)	Implementation (30%)
Legal Practitioners and Conveyancers	$407.54 million	$174.66 million
Accountants	$615.65 million	$263.85 million
Real Estate Agents	$618.8 million	$265.2 million
High Value Dealers	$115.5 million	$49.5 million

*Note – figures are rounded for ease of illustration.

The following table breaks down the costs for development and implementation at an individual reporting entity level at the median:

DNFBP type	Development Cost	Implementation Entity
Legal Practitioners and Conveyancers	$20,300.00	$8,700.00
Accountants	$18,900.00	$8,100.00
Real Estate Agents	$16,100.00	$6,900.00
High Value Dealers	$11,550.00	$4,950.00

*Note – figures are rounded for ease of illustration.

From a development perspective, the internal costs usually consist of the time necessary to understand what is required and then complete a risk assessment, draft an appropriate AML/CTF program and develop an operating manual that drives implementation that is commensurate with the ML/TF risk profile and business operations, and where possible leverages existing controls.

The external costs usually result from the need for expert support or input into understanding the risks and drafting appropriate program documentation.

Similarly, from an implementation perspective it is our experience that the internal costs are significantly made up of the time needed to implement and the need for expert assistance.

The implementation costs in our experience have a direct correlation to the quality of the AML/CTF program – the more thought out and comprehensive the program and operating manual the easier (and less expensive) it is to implement.

AML Accelerate has developed a solution that will significantly impact the development and implementation costs, by reducing the internal costs and allowing businesses to limit the need for external costs.

AML Accelerate, based on our significant knowledge of establishing and implementing AML/CTF programs and leveraging the cost estimates completed by the New Zealand MoJ in September 2016, estimates that their solution can reduce the compliance establishment costs by at least 50% per reporting entity.

This reduction is achieved by AML Accelerate offering an on-line solution that has over 30 years of AML/CTF compliance experience embedded into it.

The AML Accelerate solution provides the user with the ability to complete a structured ML/TF risk assessment, as well as to create an AML/CTF program specific to their industry, including customer due diligence standards, and develop an operating manual.

The user is guided through the completion process, thereby reducing the internal resource requirements and the need for expensive and scarce external expert support.

Ongoing costs

We also anticipate that the ongoing cost of compliance will be a factor raised by other respondents, and we have provided some comments to assist in framing that debate. Returning to the Deloitte analysis undertaken for the New Zealand MoJ, it is estimated that the annual compliance costs for operating and maintaining an AML/CTF program are between $68.3 million and $212 million for the 7,600 DNFBPs.

To put this into the Australian context, based on an estimate of the DNFBP numbers by type, we estimate that ongoing costs for all Australian DNFBPs could be between $909 million and $2.83 billion, which is equal to between $9,000.00 and $28,000 per business.

To provide greater clarity, the breakdown of ongoing costs for Australian DNFBPs at the higher end estimate is:

DNFBP type	Ongoing Cost	Per Regulated Entity
Legal Practitioners and Conveyancers	$722.73 million	$36,000.00
Accountants	$1.17 billion	$32,250.00
Real Estate Agents	$837.97 million	$21,800.00
High Value Dealers	$99.50 million	$9,950.00

*Note – figures are rounded for ease of illustration.

The breakdown of ongoing costs for Australian DNFBPs at the lower end estimate is:

DNFBP type	Ongoing Cost	Per Regulated Entity
Legal Practitioners and Conveyancers	$182.69 million	$8,650.00
Accountants	$315.95 million	$9,700.00
Real Estate Agents	$442.04 million	$11,150.00
High Value Dealers	$64 million	$6,400.00

*Note – figures are rounded for ease of illustration.

The median between the lower and higher estimates is more a realistic estimate. The breakdown of ongoing costs per DNFBP type in Australia at the median is:

DNFBP type	Ongoing Cost	Per Regulated Entity
Legal Practitioners and Conveyancers	$452.71 million	$22,325.00
Accountants	$742.97 million	$20,975.00
Real Estate Agents	$630 million	$16,475.00
High Value Dealers	$81.75 million	$8,175.00

*Note – figures are rounded for ease of illustration.

The Deloitte Report estimates that 81.5% of the annual ongoing costs relates to maintaining the understanding of its ML/TF risks and maintaining its AML/CTF program, while the remaining 18.5% of annual costs is split between customer due diligence, monitoring and record keeping.

The annual cost of maintaining the ML/TF risk assessment and the AML/CTF program translates into the following:

DNFBP type	Ongoing Cost of Maintaining the Program and Risk Assessment	Per Regulated Entity
Legal Practitioners and Conveyancers	$368.95 million	$18,200.00
Accountants	$605.52 million	$17,000.00
Real Estate Agents	$513.45 million	$13,400.00
High Value Dealers	$66.62 million	$6,750.00

*Note – figures are rounded for ease of illustration.

The solution developed by AML Accelerate also provides ongoing maintenance of the ML/TF risk assessment and the AML/CTF program through an annual license. Based on the median numbers above, AML Accelerate estimates that their solution will also reduce the business compliance ongoing annual costs to maintain the AML Program and ML/TF Risk Assessment by at least 50% per business.

Additional costs may also result from the AUSTRAC Supervision Levy, which is an annual payment based on a reporting entities level of reporting activity.

Supervision of DNFBPs

Given the different nature of DNFBP's business compared to the financial services business covered by Tranche 1, it is clear that the supervision levy and how it is applied will need careful thought to ensure a fair and equitable outcome for both DNFBPs and existing reporting entities

It is our experience that supervision (and to an extent enforcement) will be key enablers to ensuring the AML/CTF regime is effective in practice. AUSTRAC's last annual report sets out that it had undertaken only 98 supervisory visits in a population of 14,000 reporting entities during the 12-month reporting period.

Whilst we appreciate that AUSTRAC undertook other supervisory activities and has finite resources, it is our opinion that the lack of direct supervision has significantly contributed to the apparent low level of compliance across a number of industry sectors which we witness in our day to day work, and which AUSTRAC have recognised through recent industry sector risk assessment work.

The supervision of DNFBPs, which we fully support, should be undertaken by AUSTRAC, and in our opinion presents an opportunity to ensure that the mistakes of Tranche 1 are not repeated.

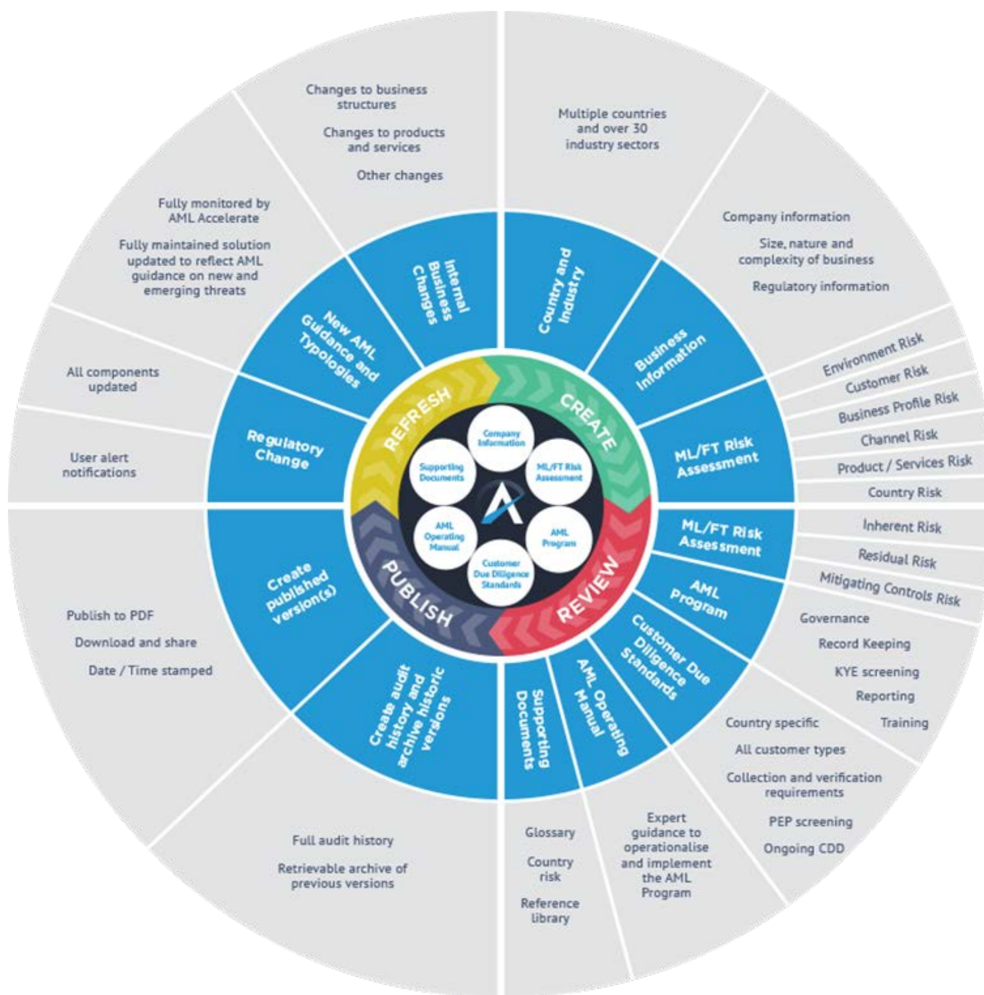
AUSTRAC needs to be adequately resourced and staffed to provide supervision and support to the DNFBPs (as well as the smaller entities covered by Tranche 1) and if that means proportionate additional cost via a supervision levy, we believe that it is a cost worth bearing by the industry to ensure they get the support they need to be compliant.

About Us

AML Accelerate

AML Accelerate is a joint venture between Arctic Intelligence and Initialism. AML Accelerate has been established to provide automated cost effective solutions to support reporting entities' compliance with AML/CTF obligations.

AML Accelerate has recently developed a product for reporting entities that allows them to undertake a ML/TF risk assessment and develop an AML/CTF program (including customer due diligence standards) that is compliant with AML/CTF requirements in a particular country (including Australia) where they are offering products and services to customers. Below is an infographic of the functionality of the AML Accelerate solution:



The product is tailored to the industry sector, and aimed at organisations covered by Tranche 1, as well as those being considered for coverage by Tranche 2.

AML Accelerate covers over 30 industries grouped under the following 23 (11 financial services and 12 non-financial and DNFBP) sectors:

Financial Services	**Non-Financial and DNFBP**
Banks, Building Societies, and Credit Unions	Accountants and Bookkeepers
Digital Currencies	Antiques/Fine Art and Auctioneers
Emerging Technologies	Bookmakers and Betting Agencies
Financial Planners	Bullion, Precious Metals and Gem Dealers
Foreign Exchange, MSBs, and Money Remitters	Casino and Gaming Machine Venues
Insurance	Jewellers
Lease Hire and Purchase Financing	Legal Professional
Stock Broking	Motor and Boat Dealers
Superannuation and Pension Funds	On-Line Gambling
Wealth and Asset Management	Pawnbroker and Second Hand Dealers
Investment Management and Funds	Real Estate
	Trust and Company Service Provider

More about AML Accelerate's approach to the industry sectors can be found at http://amlaccelerate.com/industry-sectors/

The product provides cost effective solutions that allow reporting entities to achieve compliance in a highly efficient and sustainable way. In developing this product, AML Accelerate draws on unique and unparalleled knowledge and experience contained within the joint venture partners.

More about the AML Accelerate solution can be found at http://amlaccelerate.com/

Initialism

Initialism brings together unparalleled expert knowledge, experience, and real world perspectives in the area of Anti-Money Laundering (AML)/Counter Terrorism Financing (CTF) and Targeted Financial Sanction (TFS) compliance and financial crime risk management.

Initialism's people have unique backgrounds in financial crime risk management spanning the last 30 years, covering all market segments, with a proven track record in delivering compliant, proportionate, and business sensitive AML/CTF and TFS compliance and risk management solutions. Initialism's experience, knowledge, and expertise has been developed through many years of working across all aspects of AML/CTF and TFS. This includes domestic and international money laundering law enforcement investigations, developing and implementing national AML regulation and regulatory supervision techniques, and developing pragmatic responses and achieving industry-wide consensus on solutions for AML/CTF and TFS compliance and financial crime risk management.

Initialism's experience also includes working at senior levels within major financial institutions managing AML/CTF and TFS compliance across Australia, Asia, Europe (including the UK), and the Americas (including the USA).

Since 2012, Initialism's principals have built on their experience and expertise, undertaken consulting assignments and delivered proportionate and business sensitive compliance and risk management solutions for all types and sizes of businesses subject to AML/CTF obligations and financial crime risks.

Based in Australia, and leveraging its extensive collective expertise, global experience and industry knowledge, Initialism is able to deliver cost effective solutions to support AML/CTF and TFS compliance and risk management needs regardless of the type of business, its size, or the complexity of product, customers, or business operations.

You can find out more about Initialism at http://initialism.com.au/

Arctic Intelligence

Arctic Intelligence (Arctic) was founded in 2011 to tackle an escalating problem with financial crime losses. The founders of Arctic have spent over 20 years working with some of the world's largest consulting firms, investment and retail banks and understand the challenges that these organisations face in managing these risks.

The vision was to bring together financial crime subject matter experts and world class technology skills to create solutions to assist organisations in identifying and mitigating financial crime risks, by allowing companies of different size and industry to assess both the specific financial crimes and compliances issues they face and what to do about them by receiving recommendations online.

Arctic was founded by passionate risk and compliance experts who realised that even for those who could afford it, understanding your financial crime risk and how to mitigate it was overly cumbersome, expensive, and that many available solutions were not effective and were difficult to implement.

Combining over 100 years of hands-on practical experience, Arctic's experts have developed practical end-to-end solutions for conducting risk assessments and compliance assurance monitoring.

The solution provide a framework for identifying, assessing, mitigating and managing risk, and critically providing tangible and actionable recommendations based on input to the solution.

Designed for different industries and company sizes each tool asks a series of expertly designed questions to assess the situation. The responses are then analysed to deliver practical recommendations to mitigate the risk or ensure compliance with industry regulations.

You can find out more about Artic Intelligence at http://arctic-intelligence.com/

Our Response to Your Questions

Legal Practitioners

DISCUSSION QUESTIONS

1. What services provided by legal practitioners and conveyancers pose a ML/TF risk?
2. Do any of these services pose a low ML/TF risk in the Australian context?
3. What are the effects of requiring legal practitioners and conveyancers to comply with AML/CTF obligations when performing services that may pose an ML/TF risk?
4. To what extent are due diligence obligations captured by existing regulation for legal practitioners and conveyancers?

Q1. Legal practitioners and conveyancers pose a ML/TF risk if they carry out services involving professional client accounts, the formation of trusts and companies and conveyancing services, as these are particularly attractive avenues for criminals trying to legitimise the proceeds of crime.

The FATF Recommendations identify that the following services offered by lawyers, notaries, other independent legal professionals and accountants should be covered:

- buying and selling of real estate;
- managing of client money, securities or other assets;
- management of bank, savings or securities accounts;
- organisation of contributions for the creation, operation or management of
- companies;
- creation, operation or management of legal persons or arrangements, and
- buying and selling of business entities.

Our research identifies that the following services offered by legal practitioners and conveyancers pose specific ML/TF risks and should therefore be included in Australia's AML/CTF regime:

- acting as a formation agent of legal persons or arrangements
- acting as, or arranging for a person to act as, a nominee director or nominee shareholder or trustee in relation to legal persons or arrangements
- providing a registered office or a business address, a correspondence address, or an administrative address for a company, a partnership, or any other legal person or arrangement
- managing or arranging client funds, accounts, securities, or other assets
- engaging in or giving instructions in relation to any conveyancing on behalf of a customer in relation to the sale or purchase, or the proposed sale or purchase, of real estate
- engaging in or giving instructions in relation to transactions on behalf of any person in relation to the buying or selling of real estate or businesses
- engaging in or giving instructions in relation to transactions for customers related to creating, operating, and managing companies.

Q2. It is our view that none of these services pose a low risk in the Australian context, and therefore all should be covered by Australia's AML/CTF regime. This would also align Australia's coverage of legal practitioners and conveyancers to the model proposed in New Zealand's draft bill published in late 2016.

Q3. The effect of requiring legal practitioners and conveyancers to comply with AML/CTF obligations when offering or engaging in higher ML/TF risk services, would be to significantly strengthen Australia's AML/CTF regime. The inclusion of legal practitioners and conveyancers rectifies a longstanding gap in Australia's regime.

It can also be argued that the non-inclusion of legal practitioners and conveyancers in the AML/CTF regimes places a disproportionate burden on current businesses subject to AML/CTF regimes.

Legal practitioners and conveyancers are recognised as an important set of "gatekeepers" in AML/CTF terms and the non-inclusion of them will hamper Australia's ability to put in place a comprehensive, proportionate, and effective AML/CTF regime based on all money laundering and terrorist financing risks, as required by the FATF.

It should be recognised that legal practitioners and conveyancers are different businesses from the financial service businesses currently covered by AML/CTF requirements. Fortunately, the risk based approach adopted by Australia allows the controls required by the AML/CTF Act and AUSTRAC Rule to be proportionate to the business profile of the business, as well as to their money laundering and terrorist financing risks and vulnerabilities.

There are some important considerations for legal practitioners and conveyancers that need to be addressed when determining the model for regulation under Australia's AML/CTF regime that will directly impact them when complying with AML/CTF obligations.

The size of the legal practitioners and conveyancing businesses - One major difference can be in size of business, with most legal practitioners and conveyancers being small businesses. A Report in September 2016 by Deloitte for the New Zealand Ministry of Justice identified that 98% of legal practitioners had less than 50 employees and over 51% of legal practitioners had less than 20 employees.

It is our understanding that the majority of businesses operating within the Australian legal practitioners and conveyancing industry would be small businesses. This means that most legal practitioners and conveyancers will not have the dedicated (full or part-time) in-house compliance resources.

The type of relationship with clients - The type of relationship legal practitioners have with their customers is different when compared to most financial services businesses. Whilst it can be argued that legal practitioners have ongoing client relationships, they and conveyancers also have many customers that engage them for single or one- off transactions, and will not have ongoing relationships with customers.
This would mean that for some legal practitioners and conveyancers ongoing customer due diligence is not relevant, and transaction monitoring should be focused on a single transaction.

The type of products and services - Most services offered by legal practitioners and conveyancers will also involve another reporting entity. Normally, transactions will involve the flow of funds from a regulated financial institution to pay for a product or service. The fact that a legal practitioner or conveyancing service is usually connected to other regulated activity may mean that they can use an increased level of reliance on the controls put in place by the other regulated entity.

The cost of compliance - AML/CTF compliance can be argued to be a cost of doing business, however, care needs to be taken to avoid disproportionate costs and burdens.

The Deloitte Report for the New Zealand MoJ concluded that the cost of initial compliance for its approximately 1,600 legal practitioners and conveyancers covered by AML/CTF obligations could be between $15.29 million and $76 million. These costs result from the need to undertake a ML/TF risk assessment and develop and implement appropriate AML/CTF compliance programs.

Based on the New Zealand cost estimates, we believe that for Australia the industry level costs would be somewhere between $195.24 million and $979.7 million, but feel a median cost at an industry level would be around $582.2 million and would be a more accurate estimate of the establishment costs for legal practitioners and conveyancers.

To provide further perspective, the Deloitte Report further establishes that the cost per client or transaction for legal practitioners and conveyancers would be $35.89 per client at the higher estimate of costs, but taking the median cost above this would result in a per client cost of $20.95. Given the value of the product or service provided by legal practitioners and conveyancers this per transaction and client cost do not seem prohibitive.

Applying the same methodology as to initial costs, the ongoing cost per client or transaction for legal practitioners and conveyancers would be $22.18 per client.

Q4. We are aware that legal practitioners and conveyancers undertake a degree of due diligence on customers as part of their existing business processes, but we will leave it to other respondents who are in a better position to set out what the nature of the due diligence currently undertaken to comment further.

DISCUSSION QUESTION

5. To what extent do existing mechanisms that require regulatory oversight of legal practitioners and conveyancers mitigate any ML/TF risks that may be posed by the services they provide?
6. To what extent are due diligence obligations captured by existing regulation for legal practitioners and conveyancers at a national, state or territory level?
7. Is there evidence of a systemic problem with legal practitioners allowing ML or TF to occur by (negligently, recklessly or complicitly) failing to institute adequate measures?
8. Is more regulatory oversight of legal practitioners and conveyancers justifiable?

Q5. We understand that there are already oversight mechanisms in place for the registration/ licensing of legal practitioners and conveyancers. However, this is a self-regulatory arrangement, which does not mitigate the ML/TF risk posed by the services referred to in Question 1.

Q6. We are aware that legal practitioners and conveyancers undertake a degree of due diligence on customers, but will leave it to other respondents who are in a better position to set out the extent of due diligence currently undertaken to comment further.

Q7. In our direct professional experience, sophisticated and complex money laundering usually involves the use (wittingly or unwittingly) of legal practitioners. The use of real estate to launder the proceeds of criminal activity is also a widely-accepted money laundering typology, and as such conveyancers are undoubtedly (wittingly or unwittingly) involved in the money laundering process.

The use of legal practitioners and conveyancers lends a degree of legitimacy to the transactions used to launder funds. However, while legal practitioners and conveyancers in Australia are not currently obliged to have in place appropriate controls to prevent, identify and mitigate money laundering and terrorist financing, this creates a weakness in Australia's AML/CTF regime and increases the attractiveness and systemic vulnerability of legal practitioners and conveyancers to being involved in money laundering and terrorist financing activity.

Q8. FATF Recommendation 28 requires the regulation and supervision of Designated Non-Financial Businesses and Professions (DNFBPs), including legal practitioners and conveyancers for AML/CTF compliance.

Given the current self-regulatory arrangement referred to in Question 5, and the fact that legal practitioners and conveyancers in Australia are new to the AML/CTF regime, and are also not subject to a similar type of regulation, it is important that appropriate regulatory oversight should be put in place.

To support legal practitioners and conveyancers' compliance efforts dedicated, and focused regulatory oversight is vital to ensuring that legal practitioners and conveyancers are adequately supported and given clear guidance on compliance with AML/CTF obligations, and to ensure that Australia can be confident the regime they put in place is effective in practice.

DISCUSSION QUESTION

9. What lessons can be learned from the experience of regulating legal practitioners under AML/CTF regimes in other jurisdictions?

Q9. The inclusion of legal practitioners and conveyancers has not been addressed by many countries, which limits the lessons that can be learnt.

We would encourage the Attorney-General's Department and AUSTRAC to look to the New Zealand activity in this space, as they are more advanced in their development and implementation of an AML/CTF regime for legal practitioners and conveyancers.

Lessons can also be learnt from the UK experience, particularly around the implementation and supervision of an AML/CTF regime for legal practitioners and conveyancers.

It is our strong opinion that self-regulation of AML/CTF does not work and has the ability to create confusion, misinterpretation, and can ultimately deliver poor compliance outcomes. We therefore recommend that Australia puts in place a single supervisor for all DNFBPs including legal practitioners and conveyancers.

AML/CTF compliance will be new and alien to most legal practitioners and conveyancers', and significant support will be required to help these businesses comply. It is our experience from our work with Tranche 1 in Australia and in other jurisdictions, including the UK, that unless significant support is provided to new entrants to the AML/CTF regime poor compliance outcomes will result.

DISCUSSION QUESTIONS

10. How would AML/CTF obligations impact on client confidentiality and other ethical obligations of legal practitioners and conveyancers? In particular, how would the AML/CTF obligations impact on legal professional privilege?
11. What impact would AML/CTF compliance costs have on access to legal services within the community?
12. What additional administrative structures will legal practitioners need to put in place to comply with the requirements of the AML/CTF regime?
13. How would regulating the legal profession for AML/CTF purposes impact on the delivery of services to clients (particularly in the context of urgent legal matters that require immediate advice)?
14. What other aspects of the legal profession would be impacted by AML/CTF obligations?
15. Would regulation as a reporting entity under the AML/CTF Act affect the independent referral bar? What regulatory model would minimise the impact on the independent referral bar (e.g. reliance on CDD performed by instructing solicitors and /or clerks operate the trust) accounts)?

Q10. We will leave it to other respondents who are in a better position to set out what impact AML/CTF would have on professional privilege.

Q11. Given our analysis in response to Question 3, this establishes a cost per client or transaction for legal practitioners and conveyancers of $35.89 per client. Given the value of the product or service provided by legal practitioners and conveyancers, this per transaction and client cost do not seem prohibitive nor would have any adverse impact on the access to legal services within the community.

Q12. Assuming legal practitioners and conveyancers are subject to the same requirements as Tranche 1, it will be important that each business (or group of businesses under a DBG) has adequate oversight and governance structures in place. Additionally, given the various legal structures used by most legal practitioners and conveyancers, thought should be given to who should be designated as owners, controllers and key personnel of legal practitioners and conveyancers.

Most legal practitioners and conveyancers will also need to institute compliance officer roles within their businesses.

Q13. The current requirement to complete CDD before offering a designated service may been seen as representing a significant challenge to the legal practitioners and conveyancers, but given the nature of the services that are proposed to be in scope of the AML/CTF regime, we believe that advice, urgent or otherwise - being outside the scope of what can be given without risk of breaching AML/CTF obligations.

However, if concerns about providing urgent advice persist, given the nature of the services that are proposed to be covered by the AML/CTF regime for legal practitioners and conveyancers, consideration should be given to the use of the risk based approach to allow advice and require CDD is completed before service is fully provided or funds have been moved, rather than before any advice is given.

Q14. We will leave it to other respondents who are in a better position to set out what impact AML/CTF would have on other aspects of the legal profession.

Q15. We will leave it to other respondents who are in a better position to set out what impact AML/CTF would have on the independent referral bar.

DISCUSSION QUESTIONS

16. What broader impacts could the regulation of AML/CTF legal practitioners and conveyancers have?

Q16. The effect of requiring legal practitioners and conveyancers to comply with AML/CTF obligations when offering or engaging in higher ML/TF risk services, would be to significantly strengthen Australia's AML/CTF regime. The inclusion of legal practitioners and conveyancers rectifies a longstanding gap in Australia's regime.

The inclusion of legal practitioners and conveyancers within an AML/CTF regime will clearly increase the level of reporting to AUSTRAC. The information and intelligence dividend that should result will help authorities identify and tackle money laundering, terrorism financing and the aligned predicate offences.

Accountants

DISCUSSION QUESTIONS

1. What accountancy services pose a ML/TF risk?

2. Do any of the professional services provided by accountants and identified by the FATF as requiring regulation pose a low ML/TF risk in the Australian context?

3. What are the benefits of requiring accountants to comply with AML/CTF obligations when performing services that may pose an ML/TF risk?

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

Q1. Accountants pose a ML/TF risk if they carry out services involving professional client accounts, the formation of trusts and company services, as these are particularly attractive avenues for criminals trying to legitimise the proceeds of crime.

The FATF Recommendations identify that the following services offered by accountants should be covered:

- buying and selling of real estate;
- managing of client money, securities or other assets;
- management of bank, savings or securities accounts;
- organisation of contributions for the creation, operation or management of
- companies;
- creation, operation or management of legal persons or arrangements, and
- buying and selling of business entities.

Our research identifies that the following services offered by accountants pose specific ML/TF risks and should therefore be included in Australia's AML/CTF regime:

- acting as a formation agent of legal persons or arrangements
- acting as, or arranging for a person to act as, a nominee director or nominee shareholder or trustee in relation to legal persons or arrangements
- providing a registered office or a business address, a correspondence address, or an administrative address for a company, a partnership, or any other legal person or arrangement
- managing or arranging client funds, accounts, securities, or other assets
- engaging in or giving instructions in relation to any conveyancing on behalf of a customer in relation to the sale or purchase, or the proposed sale or purchase, of real estate
- engaging in or giving instructions in relation to transactions on behalf of any person in relation to the buying or selling of real estate or businesses
- engaging in or giving instructions in relation to transactions for customers related to creating, operating, and managing companies.

Q2. It is our view that none of these services pose a low risk in the Australian context, and therefore all should be covered by Australia's AML/CTF regime. This would also align Australia's coverage of accountants with the model proposed in New Zealand's draft bill published in late 2016.

Q3. The effect of requiring accountants to comply with AML/CTF obligations when offering or engaging in higher ML/TF risk services, would be to significantly strengthen Australia's AML/CTF regime. The inclusion of accountants rectifies a longstanding gap in Australia's regime.

It can also be argued that the non-inclusion of accountants in the AML/CTF regimes places a disproportionate burden on current businesses subject to AML/CTF regimes.

Accountants are recognised as an important set of "gatekeepers" in AML/CTF terms and the non-inclusion of them will hamper Australia's ability to put in place a comprehensive, proportionate and effective AML/CTF regime based on all money laundering and terrorist financing risks, as required by the FATF.

It should be recognised that accountants are different businesses from the financial service businesses currently covered by the AML/CTF requirements. Fortunately, the risk based approach adopted by Australia allows the controls required by AML/CTF Act and AUSTRAC Rule to be proportionate to the business profile of the business, as well as to their money laundering and terrorist financing risks and vulnerabilities.

There are some important considerations for accountants that need to be addressed when determining the model for regulation under Australia's AML/CTF regime that will directly impact them when complying with AML/CTF obligations.

***The size of the accountant businesses* -** One major difference can be in size of business, with most accountants being small businesses. A Report in September 2016 by Deloitte for the New Zealand Ministry of Justice identified that 96% of accountants had less than 50 employees and over 73% of accountants had less than 20 employees.

It is our understanding that the majority of businesses operating within the Australian accountancy industry would be small businesses. This means that most accountants will not have dedicated (full or part-time) in-house compliance resources.

***The type of relationship with clients* -** The type of relationship accountants have with their customers is different when compared to most financial services businesses. Whilst it can be argued that accountants have ongoing client relationships, they also have many customers that engage them for single or one- off transactions, and they will not have ongoing relationships with customers.

This would mean that for some accountants ongoing customer due diligence is not relevant, and transaction monitoring should be focused on a single transaction.

***The type of products and services* -** Most services offered by accountants will also involve another reporting entity. Normally, transactions will involve the flow of funds from a regulated financial institution to pay for a product or service. The fact that an accountant's services are usually connected to other regulated activity may mean that they can use an increased level of reliance on the controls put in place by the other regulated entity.

***The cost of compliance* -** AML/CTF compliance can be argued to be a cost of doing business, however, care needs to be taken to avoid disproportionate costs and burdens.

The Deloitte Report for the New Zealand MoJ concluded that the cost of initial compliance for its approximately 2223 accountants covered by AML/CTF obligations could be between $24.13 million and $96.71 million. These costs result from the need to undertake a ML/TF risk assessment and develop and implement appropriate AML/CTF compliance programs.

Based on the New Zealand cost estimates, we believe that for Australia the industry level costs would be somewhere between $353.41 million and $1.416 billion, but feel a median cost at an industry level would be around $879.5 million and would be a more accurate estimate of the establishment costs for accountants.

To provide further perspective, the Deloitte Report further establishes that the cost per client or transaction for accountants would be $61.18 per client at the higher estimate of costs, but taking the median cost above this would result in a per client cost of $37.81. Given the value of the product or service provided by accountants this per transaction and client costs do not seem prohibitive.

Applying the same methodology as to initial costs, the ongoing cost per client or transaction accountants would be $31.94 per client.

Q4. We are aware that accountants undertake a degree of due diligence on customers as part of their existing business processes, but will leave it to other respondents who in a better position to set out what due diligence is currently undertaken to comment further.

DISCUSSION QUESTION

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

Q5. We understand that there are already oversight mechanisms in place for the registration/ licensing of accountants. However, these are self-regulatory arrangement, which do not mitigate the ML/TF risk posed by the services referred to in Question 1.

DISCUSSION QUESTION

6. What lessons can be learned from the experience of regulating accountants under AML/CTF regimes in other jurisdictions?

Q6. The inclusion of accountants has not been addressed by many countries, which limits the lessons that can be learnt.

We would encourage the Attorney-General's Department and AUSTRAC to look to the New Zealand activity in this space, as they are more advanced in their development and implementation of an AML/CTF regime for accountants.

Lessons can also be learnt from the UK experience particular around the implementation and supervision of an AML/CTF regime for accountants.

It is our strong opinion that self-regulation of AML/CTF does not work and has the ability to create confusion, misinterpretation, and ultimate deliver poor compliance outcomes. We therefore recommend that Australia puts in place a single supervisor for all DNFBPs, including accountants.

AML/CTF compliance will be new and alien to most accountants' and significant support will be required to help these businesses comply.

It is our experience from our work with Tranche 1 in Australia and in other jurisdictions, including the UK that unless significant support is provided to new entrants to the AML/CTF regime poor compliance outcomes will result.

DISCUSSION QUESTIONS

7. What accountancy services should be regulated under the AML/CTF regime?
8. Do any of the accountancy services identified by the FATF for AML/CTF regulation pose a low ML/TF risk in the Australia context?
9. Should auditing, compliance services and assurance services be regulated under the AML/CTF regime?

Q7. We suggest that the accountancy services set out in our answer to Question 1 should be regulated under the AML/CTF regime. We will leave it to other respondents who are a better position to set out in more detail which accountancy services should be covered.

Q8. It is our view that none of these services identified by the FATF pose a low risk in the Australian context, and therefore all should be covered by Australia's AML/CTF regime.

This would also align Australia's coverage of accountants to the model proposed in New Zealand's draft bill published in late 2016.

Q9. We will leave it to other respondents who are in a better position to set out whether auditing, compliance and assurance services should be covered by the AML/CTF regime.

DISCUSSION QUESTIONS

10. How would AML/CTF obligations impact on the client confidentiality obligations of accountants?
11. What other aspects of the accountancy sector would be impacted by AML/CTF obligations?

Q10. We will leave it to other respondents who are in a better position to set out what impact AML/CTF would have on client confidentiality. However, we believe based on our experience, that client confidentiality obligations need not conflict/impact a reporting entity's ability to meet AML/CTF obligations.

Q11. We will leave it to other respondents who are in a better position to set out what impact AML/CTF would have on other aspects of the accountancy sector.

Real Estate

DISCUSSION QUESTIONS

1. What services provided by real estate professionals pose a ML/TF risk?
2. Are there circumstances where the buying and selling of real estate in the Australian context poses a low ML/TF risk?
3. What are the benefits of requiring real estate professionals to comply with AML/CTF obligations when performing services that may pose an ML/TF risk?

Q1. The FATF Recommendations identify the following services offered by real estate professionals:

- engaging in or giving instructions in relation to transactions on behalf of any person in relation to the buying or selling of real estate

Our research identifies that the following services offered by real estate professionals pose specific ML/TF risks:

- the buying and selling of real estate on behalf of a person, where the service is provided in the course of carrying on a business
- acting as a broker between the vendor of real estate and a potential purchaser, and the service is provided in the course of carrying on a business
- providing property management services where large cash payments are accepted for the payment of rent, and
- providing a conveyancing service to a person in relation to the purchase or sale of land, where the service is provided in the course of carrying on a business.

We would further suggest that the transaction refers to the rights, interests, and benefits related to the ownership of real estate, which is a physical asset.

Q2. It is our view that none of these services pose a low risk in the Australian context, and therefore all should be covered by Australia's AML/CTF regime. This would also align Australia's coverage of real estate professionals with the model proposed in New Zealand's draft bill published in late 2016.

Q3. The effect of requiring real estate professionals to comply with AML/CTF obligations when offering or engaging in higher ML/TF risk services, would be to significantly strengthen Australia's AML/CTF regime. The inclusion of real estate professionals rectifies a longstanding gap in Australia's regime.

It can also be argued that the non-inclusion of real estate professionals in the AML/CTF regime places a disproportionate burden on current businesses subject to AML/CTF regimes.

Real estate professionals are recognised as an important set of "gatekeepers" in AML/CTF terms and the non-inclusion of them will hamper Australia's ability to put in place a comprehensive, proportionate and effective AML/CTF regime based on all money laundering and terrorist financing risks, as required by the FATF.

It should be recognised that real estate professionals are different businesses from the financial service businesses currently covered by AML/CTF requirements. Fortunately, the risk based approach adopted by Australia allows the controls required by the AML/CTF Act and AUSTRAC Rule to be proportionate to the business profile of the business, as well as to their money laundering and terrorist financing risks and vulnerabilities.

There are some important considerations for real estate professionals that need to be addressed when determining the model for regulation under Australia's AML/CTF regime that will directly impact them when complying with AML/CTF obligations.

***The size of the real estate professional's business* -** One major difference can be in size of business, with most real estate professionals being small businesses. A Report in September 2016 by Deloitte for the New Zealand Ministry of Justice identified that 95% of real estate professionals had less than 50 employees and over 86% of real estate professionals had less than 20 employees.

It is our understanding that the majority of businesses operating within the Australian real estate industry would be small businesses. This means that most real estate professionals will not have dedicated (full or part-time) in-house compliance resources.

***The type of relationship with clients* -** The type of relationship real estate professionals have with their customers is different when compared to most financial services businesses. Whilst it can be argued that real estate professionals have ongoing client relationships, they also have many customers that engage them for single or one- off transactions, and they will not have ongoing relationships with customers.

This would mean that for some real estate professionals ongoing customer due diligence is not relevant, and transaction monitoring should be focused on a single transaction.

***The type of products and services* -** Most services offered by real estate professionals will also involve another reporting entity. Normally, transactions will involve the flow of funds from a regulated financial institution to pay for a product or service. The fact that real estate professionals' services are usually connected to other regulated activity may mean that they can use an increased level of reliance on the controls put in place by the other regulated entity.

***The cost of compliance* -** AML/CTF compliance can be argued to be a cost of doing business. However, care needs to be taken to avoid disproportionate costs and burdens.

The Deloitte Report for the New Zealand MoJ concluded that the cost of initial compliance for its approximately 1006 real estate agents covered by AML/CTF obligations could be between $12.63 million and $33.25 million. These costs result from the need to undertake a ML/TF risk assessment and develop and implement appropriate AML/CTF compliance programs.

Based on the New Zealand cost estimates, we believe that for Australia the industry level costs would be somewhere between $482.4 million and $1.268 billion, but we feel a median cost at an industry level would be around $884 million and a more accurate estimate of the establishment costs for real estate.

To provide further perspective, the Deloitte Report further establishes that the cost per client or transaction for real estate agents would be $338.08 per client at the higher estimate of costs, but taking the median cost above this would result in a per client cost of $235.14. Given the value of the product or service provided by real estate agents this per transaction and client cost does not seem prohibitive.

Applying the same methodology as to initial costs, the ongoing cost per client or transaction for real estate agents at the median ongoing cost level would be $167.58 per client.

DISCUSSION QUESTIONS

4. To what extent are the AML/CTF customer due diligence obligations already reflected in existing regulation (including self-regulation) for Australian real estate professionals?
5. To what extent do existing mechanisms that allow for oversight of real estate transactions mitigate the ML/TF risks posed by services that provide for the buying and selling of real estate?

Q4. We are aware that real estate professionals undertake a degree of due diligence on customers as part of their existing business processes, but will leave it to other respondents who are in a better position to set out the nature of the due diligence is currently undertaken to comment further.

Q5. We will leave it to other respondents who are in a better position to set out the oversight mechanisms in place for the registration/ licensing of real estate transactions.

DISCUSSION QUESTION

6. What lessons can be learned from the experience of regulating real estate professionals under AML/CTF regimes in other jurisdictions?

Q6. The inclusion of real estate professionals has not been addressed by many countries, which limits the lessons that can be learnt.

We would encourage the Attorney-General's Department and AUSTRAC to look to the New Zealand activity in this space, as they are more advanced in their development and implementation of an AML/CTF regime for real estate professionals.

Lessons can also be learnt from the UK experience, particularly regarding the implementation and supervision of an AML/CTF regime for real estate professionals.

It is our strong opinion that self-regulation of AML/CTF does not work and has the ability to create confusion, misinterpretation, and ultimately deliver poor compliance outcomes. We therefore recommend that Australia puts in place a single supervisor for all DNFBPs, including real estate professionals.

AML/CTF compliance will be new and alien to most real estate professionals and significant support will be required to help these businesses comply. It is our experience from our work with Tranche 1 in Australia and in other jurisdictions, including the UK, that unless significant support is provided to new entrants to the AML/CTF regime poor compliance outcomes will result.

DISCUSSION QUESTIONS:

7. Should the term 'real estate' be defined under the AML/CTF regime? If yes, how?
8. What real estate services should be regulated or excluded under the AML/CTF regime?
9. When should the obligations for real estate professionals to conduct CDD arise?
10. What factors should be taken into account in determining whether a person is in the business of buying and selling real estate?
11. Should real estate professionals have obligations to identify both parties to a real estate transaction?
12. Should real estate professionals be required to comply with AML/CTF obligations if they provide property management and leasing services and accept large sums of cash as payment from tenants/leasees?

Q7. We support the preferred approach to use the term 'real estate' and rely on its ordinary meaning and not to define the term in legislation. This approach would allow for the broadest possible interpretation of what constitutes real estate.

Q8. We support the proposed services to be regulated under the AML/CTF Act, namely:

- the buying and selling of real estate on behalf of a person, where the service is provided in the course of carrying on a business
- acting as a broker between the vendor of real estate and a potential purchaser and the service is provided in the course of carrying on a business
- providing property management services where large cash payments are accepted for the payment of rent, and
- providing a conveyancing service to a person in relation to the purchase or sale of land, where the service is provided in the course of carrying on a business.

Q9. We support the proposal that the obligation to conduct CDD should arise at the time that there is an exchange of contract between the vendor and purchaser. However, where property management or leasing services are regulated, the obligation to conduct CDD should arise before the first time the business accepts a payment under the property management or leasing arrangements.

Q10. Property developers that are not real estate agents, but who sell new homes or buildings directly to the public should be included into the regime. These businesses are equally vulnerable to ML/TF activity.

We support the idea that AML/CTF regulation of real estate agents and property developers would maintain competitive neutrality within the real estate industry and address shared ML/TF risks. Failure to include property developers, may result in the purchase of real estate from property developers being more attractive to ML/TF.

Q11. The FATF standards require real estate professionals to comply with customer due diligence (CDD) requirements for both parties relating to a transaction for the buying and selling of real estate (i.e. the vendor and the purchaser). We support this approach.

We do not believe that the requirement to conduct CDD with respect to both the vendor and the purchaser would be onerous for real estate agents and other entities involving in buying or selling real estate, as they are usually in contact with the seller and purchaser as part of the negotiation process.

Limiting the CDD to the vendor, as in the UK model, has created significant ML/TF risks in the UK property market and gaps in the information available to support the identification of ML/TF activity.

Aligning to the FATF standards is also in line with the approach applied in Tranche 1, where reporting entities were required to understand who they were doing business with.

Q12. Property management or leasing services should be regulated. However, we do not feel that the risk only results from large cash transactions. The obligation to conduct CDD should arise before the first time the business accepts a payment under the property management or leasing arrangements.

High Value Dealers

DISCUSSION QUESTIONS

1. What are the ML/TF risks posed by high-value dealers conducting transactions involving large sums of cash?
2. What high-value goods pose a high ML/TF risk in Australia?
3. What high-value goods pose a low ML/TF risk in Australia?
4. Are there transactions conducted by high-value dealers involving small sums of cash that pose high ML/TF risks?

Q1. There is a set of high value dealer ML/TF risks relating specifically to cash. Some crimes, such as those related to the illegal drug market or tax evasion, substantively use cash.

High value goods are an easy way for criminals to transfer cash into assets that are easy to trade and difficult to trace, and easy to benefit from the proceeds of crimes.

Q2. Businesses that trade in high value goods such as jewellery, precious metals, precious stones, watches, motor vehicles, boats, art or antiquities, and other businesses offering high cost life style goods are particularly high ML/TF risk. These risks are further enhanced by the acceptance of cash.

Q3. It is our view that none of these services pose a low risk in the Australian context, and therefore all should be covered by Australia's AML/CTF regime.

Q4. Whether a transaction involving small sums of cash poses a high ML/TF risk is a highly subjective matter. It ultimately depends on a number of factors, such as who is the purchaser, where did the purchaser funds originate from, who is the seller, and what is the nature of the goods.

We would strongly recommend that Australia does not follow the New Zealand approach to allow high value dealers who prohibit $15,000 or above cash transactions to simply opt out of the AML/CTF regime.

We believe that the proposed approach in the New Zealand draft Bill may create an environment that impacts the effectiveness of New Zealand's AML/CTF regime, and adversely impacts the information available for law enforcement to identify ML/FT activity.

We recently responded to a consultation on the draft Bill, recommending strongly that the criteria of accepting $15,000 or more cash not be included in the AML/CTF regime, as it will result in dealers in high value goods restricting their business simply to avoid having any obligations

We fully support, as a pragmatic way to reduce the burden of the AML/CTF regime whilst still addressing the ML/TF risks faced by the sector that high value dealers have a reduced set of obligations, but believe this should include reporting suspicious matters regardless of thresholds.

DISCUSSION QUESTION

5. To what extent do existing mechanisms that allow for regulatory oversight of HVDs mitigate any ML/TF risks posed by HVDs?

Q5. We will leave it to other respondents who are in a better position to set out the oversight mechanisms in place for the registration/ licensing of real estate transactions.

DISCUSSION QUESTION

6. What lessons can be learned from the experience of regulating HVDs under AML/CTF regimes in other jurisdictions?

Q6. The inclusion of high value dealers has not been addressed by many countries, which limits the lessons that can be learnt.

We would encourage the Attorney-General's Department and AUSTRAC to look to the New Zealand activity in this space, as they are more advanced in their development and implementation of an AML/CTF regime for high value dealers.

However, whilst we support a proportionate regime, we currently believe that New Zealand's approach to limit the regime based purely on the business' willingness to accept cash, will mean that important information useful to the fight against ML/TF and predicate crimes will be unavailable.

It is our strong opinion that self-regulation of AML/CTF does not work and has the ability to create confusion, misinterpretation, and ultimately deliver poor compliance outcomes. We therefore recommend that Australia puts in place a single supervisor for all DNFBPs, including high value dealers.

AML/CTF compliance will be new and alien to most high value dealers' and significant support will be required to help these businesses comply. It is our experience from our work with Tranche 1 in Australia and in other jurisdictions, including the UK that unless significant support is provided to new entrants to the AML/CTF regime poor compliance outcomes will result.

DISCUSSION QUESTIONS

7. What goods should be included in the definition of high-value goods?

8. Should HVD be defined broadly to be any good over the threshold (like in the UK) or be defined more specifically to certain types of goods as suggested above?

9. Is a threshold of AUD10,000 to trigger AML/CTF obligations appropriate?

10. Should Australia set an upper limit on all cash payments that applies universally (i.e. prohibit any business from accepting a cash payment for goods and services above a prescribed threshold)?

Q7. We support the proposal that high value dealers be regulated under the AML/CTF regime when:

- engaging in a transaction that relates to the buying and selling of jewellery, antiques and collectibles, fine art, jet skis, boats, yachts, luxury motor vehicles and building, bathroom and kitchen supplies, and
- the value of the transaction is equal to, or exceeds, a nominated threshold.

However, we would strongly caution against applying a cash only threshold for the reasons stated above and our comments about the issues such a cash threshold creates.

We would therefore recommend that if a threshold of $10,000.00 is set (as proposed) it should not be limited to cash, but should include all transactions over $10,000.00 regardless of the method of payment.

This would support a focus on the real ML/TF risks and reduce the impact on small transactions that have a lower ML/TF risk.

Q8. Further to our response to Question 7, we believe that an AML/CTF regime that has a threshold that relates to goods over a particular value regardless of the method of payment should be included in the AML/CTF regime.

However, our experience of the UK regime leads us to believe a more nuanced approach may be appropriate. We would therefore suggest a 'hybrid' approach be adopted by Australia, which targets particular types of high value good that are known to be used as part of money laundering activity and criminal enterprises, but includes all that offer goods over a particular threshold ($10,000).

As a result, whether or not high value dealers have obligations under the AML/CTF regime would be based on their business and the value of the goods they sold, rather than some artificial or arbitrary cash transaction value. This would give high value dealers clarity on when they were covered, and allow them to make business decisions based on the type of goods they sold, not whether they were prepared to accept cash.

Q9. We support the $10,000.00 figure as being the appropriate trigger, so long as that is for cash and non-cash transactions.

Q10. We believe that Australia should not set an upper cash threshold for transactions. As part of a risk based approach, reporting entities, including high value dealers, need to assess the ML/TF risks of a particular customer or transaction. Setting an upper cash limit is unnecessarily prescriptive and contrary to the basis of the risk based approach.

DISCUSSION QUESTION

11. What impact would AML/CTF compliance costs have on HVDs?

12. What other aspects of the HVD sector would be impacted by AML/CTF obligations?

13. How important are cash transactions to HVDs?

14. If HVDs were regulated under Australia's AML/CTF regime as suggested in this paper, would the majority of HVDs refuse to accept cash for high-value goods to exempt themselves from regulation?

Q11. AML/CTF compliance can be argued to be a cost of doing business, however, care needs to be taken to avoid disproportionate costs and burdens.

The Deloitte Report for the New Zealand MoJ concluded that the cost of initial compliance for its approximately 2,800 high value dealers covered by AML/CTF obligations could be between $20.21 million and $72.67 million.

These costs result from the need to undertake a ML/TF risk assessment and develop and implement appropriate AML/CTF compliance programs.

Based on the New Zealand cost estimates, we believe that for Australia the industry level costs would be somewhere between $72 million and $259 million, but feel a median cost at an industry level would be around $165 million and a more accurate estimate of the establishment costs for high value dealers.

To provide further perspective, the Deloitte Report further establishes that the cost per client or transaction for high value dealers would be $73.76 for motor dealers and $ 3.20 per client at the higher estimate of costs.

Given the value of the goods provided by high value dealers this per transaction and client cost does not seem prohibitive.

Q12. We will leave it to other respondents who are in a better position to set out the other aspects of the high value dealer sector that would be impacted by AML/CTF obligations.

Q13. We will leave it to other respondents who are in a better position to set out how important cash transactions are to high value dealers, but believe that the majority of transactions will not be cash, given the value of the goods.

Q14. We strongly believe that the criteria of accepting cash over a threshold included in the AML/CFT regime proposal will result in dealers in high value goods restricting their business simply to avoid having any obligations.

As a result, we urge the Attorney General's Department to reconsider this proposal and remove this criterion for inclusion in the AML/CFT regime.

Trust Company Service Providers

DISCUSSION QUESTIONS

1. What services provided by TCSPs pose a ML/TF risk?
2. Do any of the services provided by TCSPs, and identified by the FATF as requiring regulation, pose a demonstrated low ML/TF risk in the Australian context?
3. What are the benefits of requiring TCSPs to comply with AML/CTF obligations when performing services that may pose an ML/TF risk?
4. To what extent are the FATF's CDD obligations already reflected in existing regulation (including self-regulation) for Australian TCSPs?

Q1. TCSPs pose an ML/TF risk if they carry out services involving the formation of trusts and company services as these are particularly attractive avenues for criminals trying to legitimise the proceeds of crime.

The FATF Recommendations identify the following services offered by TCSPs should be covered:
- managing of client money, securities or other assets;
- management of bank, savings or securities accounts;
- organisation of contributions for the creation, operation or management of
- companies;
- creation, operation or management of legal persons or arrangements, and
- buying and selling of business entities.

Our research identifies that the following services offered by TCSPs pose specific ML/TF risks and should therefore be included in Australia's AML/CTF regime:
- acting as a formation agent of legal persons or arrangements
- acting as, or arranging for a person to act as, a nominee director or nominee shareholder or trustee in relation to legal persons or arrangements
- providing a registered office or a business address, a correspondence address, or an administrative address for a company, a partnership, or any other legal person or arrangement
- managing or arranging client funds, accounts, securities, or other assets
- engaging in or giving instructions in relation to any conveyancing on behalf of a customer in relation to the sale or purchase, or the proposed sale or purchase, of real estate
- engaging in or giving instructions in relation to transactions on behalf of any person in relation to the buying or selling of real estate or businesses
- engaging in or giving instructions in relation to transactions for customers related to creating, operating, and managing companies.

Q2. It is our view that none of these services pose a low risk in the Australian context, and therefore all should be covered by Australia's AML/CTF regime. This would also align Australia's coverage of TCSPs to the model proposed in New Zealand's draft bill published in late 2016.

Q3. The effect of requiring TCSPs to comply with AML/CTF obligations when offering or engaging in higher ML/TF risk services, would be to significantly strengthen Australia's AML/CTF regime. The inclusion of TCSPs rectifies a longstanding gap in Australia's regime.

It can also be argued that the non-inclusion of TCSPs in the AML/CTF regimes places a disproportionate burden on current businesses subject to AML/CTF regimes.

TCSPs are recognised as an important set of "gatekeepers" in AML/CTF terms and the non-inclusion of them will hamper Australia's ability to put in place a comprehensive, proportionate and effective AML/CTF regime based on all money laundering and terrorist financing risks, as required by the FATF.

It should be recognised that TCSPs are different businesses from the financial service businesses currently covered by AML/CTF requirements. Fortunately, the risk based approach adopted by Australia allows the controls required by the AML/CTF Act and AUSTRAC Rule to be proportionate to the business profile of the business, as well as to their money laundering and terrorist financing risks and vulnerabilities.

Q4. We are aware that TCSPs undertake a degree of due diligence on customers as part of their existing business processes, but will leave it to other respondents who are in a better position to set out the nature of the due diligence currently undertaken to comment further.

DISCUSSION QUESTIONS

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

Q5. We are aware that some TCSPs are also lawyers or accountants so may be covered by existing mechanisms, but will leave it to other respondents who are in a better position to comment further.

DISCUSSION QUESTION

6. What lessons can be learned from the experience of regulating TCSPs under AML/CTF regimes in other jurisdictions?

Q6. We would encourage the Attorney-General's Department and AUSTRAC to look to the New Zealand activity in this space, as they are more advanced in their development and implementation of an AML/CTF regime for TCSPs.

Lessons can also be learnt from the UK experience particularly around the implementation and supervision of an AML/CTF regime for TCSPs. It is our strong opinion that self-regulation of AML/CTF (even if there was an appropriate body) does not work and has the ability to create confusion, misinterpretation, and ultimately deliver poor compliance outcomes. We therefore recommend that Australia puts in place a single supervisor for all DNFBPs, including TCSPs.

AML/CTF compliance will be new and alien to most TCSPs' and significant support will be required to help these businesses comply.

It is our experience from our work with Tranche 1 in Australia and in other jurisdictions, including the UK, that unless significant support is provided to new entrants to the AML/CTF regime poor compliance outcomes will result.

DISCUSSION QUESTIONS

7. What services provided by TCSPs should be regulated under the AML/CTF regime?
8. Do any of the services provided by TCSPs as defined by the FATF pose a low ML/TF risk in the Australian context? If so, what evidence is there of this?
9. What should be done if there is an overlap of regulation of DNFBPs?
10. What impact would the costs associated with complying with the AML/CTF regime have on TCSPs?
11. What additional administrative structures will legal practitioners need to put in place to comply with the requirements of the AML/CTF regime?
12. How would regulating TCSPs for AML/CTF purposes impact on the delivery of services to clients?
13. How would AML/CTF obligations impact on the client confidentiality obligations of TCSPs?

Q7. The following services offered by TCSPs pose specific ML/TF risks and should therefore be included in Australia's AML/CTF regime:

- acting as a formation agent of legal persons or arrangements
- acting as, or arranging for a person to act as, a nominee director or nominee shareholder or trustee in relation to legal persons or arrangements
- providing a registered office or a business address, a correspondence address, or an administrative address for a company, a partnership, or any other legal person or arrangement
- managing or arranging client funds, accounts, securities, or other assets
- engaging in or giving instructions in relation to any conveyancing on behalf of a customer in relation to the sale or purchase, or the proposed sale or purchase, of real estate
- engaging in or giving instructions in relation to transactions on behalf of any person in relation to the buying or selling of real estate or businesses
- engaging in or giving instructions in relation to transactions for customers related to creating, operating, and managing companies.

Q8. It is our view that none of these services pose a low risk in the Australian context, and therefore all should be covered by Australia's AML/CTF regime.

Q9. It is likely that TCSPs will also be covered under the proposals for legal practitioners and/or accountants as some of the services are the same.

The risk of overlap can be resolved by setting out a clear set of "designated services" that are covered by the AML/CTF regime rather than focusing on types of DNFBPs.

In New Zealand TCSPs are already regulated, but lawyers and accountants are not. This has created a significant anomaly in New Zealand's AML/CTF regime where two businesses operating out of the same building and offering the same services may not both be regulated. As one is a legal practice, it is not covered by the AML/CTF regime.

New Zealand is seeking to address this anomaly in the draft Bill published for consultation in late December 2016.

Q10. AML/CTF compliance can be argued to be a cost of doing business, however, care needs to be taken to avoid disproportionate costs and burdens.

Given the close alignment of services offered by TCSPs and those offered by legal practitioners and accountants set out previously we would estimate that the costs would be equivalent to the median of legal practioners and accountants. Our research identifies that there could be around 10,700 businesses that provide one or more of the services proposed:

DNFBP type	Establishment Cost	Per Regulated Entity
Legal Practitioners and Conveyancers	$582.2 million	$29,000.00
Accountants	$879.5 million	$27,000.00
TSCPs (10,700)	$299.6 million	$28,000.00

*Note – figures are rounded for ease of illustration.

As a result, we estimate that establishment costs across all approximately 10,700 TCSPs could be $299.5 million, or $28000.00 per business.

We estimated in our responses to the legal practitioners and accountant questions that the median cost would result in a per client cost of $20.95 for legal practioners and $37.81 accountants respectively.

Applying the median logic to TSCPs would result in a per client cost of $29.38. Given the value of the product or service provided by TCSPs, the per transaction and client costs do not seem prohibitive.

Q11. We will leave it to other respondents who are in a better position to set out the nature of the additional administrative structures legal practitioners offers TCSP services would need to put in place.

Q12. We will leave it to other respondents who in a better position to set out what the impact of being subject to the AML/CTF regime would have on TCSPs.

However, it is our experience that TCSPs will already collect and verify a significant amount of the information required to establish a trust or company, so we envisage the impact will be minimal from a client perspective.

Q13. We will leave it to other respondents who are in a better position to set out the nature of the impact AML/CTF would have on client confidentiality. However, we believe based on our experience, that client confidentiality obligations need not conflict/impact a reporting entity's ability to meet AML/CTF obligations.

Conclusion

DNFBPs are an important part of the AML/CFT jigsaw. The inclusion of DNFBPs in the Australian AML/CFT regime, represents a significant and important wave of AML/CFT regulatory reform that will level the playing field, and enhance the ability to detect and prevent money laundering, terrorist finance and other predicate crimes.

Bringing DNFBPs into the AML/CFT regime is not easy and requires careful consideration to strike a balance between compliance costs and benefits. It is important that an appropriate balance of costs versus benefits is achieved to deliver a regime proportionate to the ML/FT risk.

We would like to thank the Attorney General's Department for this opportunity to provide input into the development of the regulatory model for DNFBPs, and look forward to continued engagement and participation in further work to design and refine the AML/CTF regime.

Yours faithfully

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