



Australian Automotive Dealer Association Ltd.

ACN: 167 598 085

The Sir Jack Brabham Automotive Centre of Excellence

8/2728 Logan Road, Eight Mile Plains, Brisbane Queensland 4113

15 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

Email: antimoneylaundering@ag.gov.au

AUSTRALIAN AUTOMOTIVE DEALER ASSOCIATION LTD ATTORNEY-GENERAL'S CONSULTATION PAPER: HIGH- VALUE DEALERS AND ANTI-MONEY LAUNDERING AND COUNTER-TERRORISM FINANCING (AML/CTF)

1. Introduction

1.1 This submission has been prepared by the Australian Automotive Dealer Association Ltd (AADA) in response to the consultation paper issued in November 2016 by the Attorney-General's Department entitled *High-value dealers: a model for regulation under Australia's anti-money laundering and counter-terrorism financing (AML/CTF) regime*.

1.2 AADA is the peak advocacy industry body representing franchised new motor vehicle dealers in Australia. There are over 1,500 new motor vehicle dealers in Australia that operate about 2,600 new vehicle outlets. Dealerships range from family owned small businesses (SMEs) to larger businesses including three public companies. The Australian new car market is the most competitive in the world with 67 brands and 350 models competing for annual new car sales of around 1.2 million units.

CEO - David Blackhall

P.O. Box 4530 Eight Mile Plains QLD 4113

0413 007 833

dblackhall@aada.asn.au

Policy Director

Michael Deed

0417 742 956

mdeed@aada.asn.au

Directors

Chairman & NSW - Terry Keating

0418 668 277

terry.keating@jtfossey.com.au

VIC - Leigh Smith

0411 266 977

leighsmith@gws.com.au

QLD - Ian M. Field

0419 729 763

ifield@aada.asn.au

SA - Richard Collins

0419 992 224

richardc@jarviscars.com.au

TAS - Marcus Birrell

0407 872 052

marcusb@motors.com.au

ACT - Richard Rolfe OAM

0411 189 714

richard.rolfe@audicc.com.au

Appointed - Martin Ward

0418 855 455

mward@apeagers.com.au

Appointed - Mark Woelders

0418 878 806

markw@motorama.com.au

Appointed - Paul Warren

0418 233 332

paul.warren@peterwarren.com.au

Appointed - Anthony Altomonte

02 9418 5588

aaltomonte@alto.com.au

Appointed - John McConnell

0413 688 552

jmccconnell@ahg.com.au

Appointed - Graeme Stewart

0411 869 682

graeme.stewart@gasmotors.com.au

Secretary - Vinesh George

0404 077 078

vinesh@vsgeorge.com.au

Legal Advisers - HWL Ebsworth

estents@hwle.com.au

Business Advisers - BDO Australia

mark.ward@bdo.com.au

2. Executive summary

2.1 AADA submits that the Government's AML/CTF objectives would be best and most efficiently achieved by simply legislating to prohibit cash vehicle sale transactions by dealers.

2.2 However, this ignores the practicality of commercial operations where some franchised car dealers contract with customers who reasonably pay cash and why, accordingly, many of them have moved to AUSTRAC online for current significant cash transaction reports (SCTRs) and suspicious transaction reports (STRs) triggered by their obligations as insurance intermediaries.

2.3 A cash transaction prohibition (at least for the vehicle purchase, even if not for the insurance product sale), combined with existing regulation - involving motor vehicle dealer licensing, motor vehicle registration and record keeping - would substantially mitigate the risk of ML/TF without adding a further burden on business. Motor vehicle dealers should not be subject to the more complex AML/CTF regime.

2.4 If motor vehicle dealers are to be subject to the AML/CTF regime, AADA supports the proposed regime feature that the regime would be inapplicable to dealers who elect not to deal in cash for vehicle sales.

2.5 In any event, the regime should not be triggered by activities other than vehicle sales. Sales of parts and accessories, and servicing, are relatively low value and not possible activities of money laundering.

2.6 There are attributes of the motor retailing industry that make application of a full AML/CTF regime a disproportionately burdensome response to a modest ML/TF risk.

3. Industry context

3.1 Vehicle dealerships are relatively labour-intensive and low margin businesses that focus on individual transactions and post-transaction customer needs (rather than more "connected" relationships in the way that AML-regulated financial services businesses do). Dealers are licensed and vehicles are registered under state or territory law. Considerable data is generated in relation to buyers and sellers, which could be readily analysed for frequency of trading in terms of number of vehicles and ownership duration.

3.2 The vast majority of new vehicles in Australia are acquired either by fleet buyers or individuals who finance the vehicle by borrowing or leasing from an AML regulated

financier. New vehicles are also increasingly being sold directly by manufacturers or their Australian importer subsidiaries.

4. Effective targeting of ML/TF risk

4.1 Whatever incidence of ML/TF there is in vehicle retailing, AADA believes that the burden of regulation can only be justified if the regulation directly targets an identifiable risk factor and the regulation can be effective in materially mitigating or managing that risk.

4.2 AADA understands the process of analysis of risk factors in other industries that leads to the re-design or modification of business processes to reduce ML/TF risk. Vehicle retailing is a simple process involving one service, one national jurisdiction and one legal transaction (or 'delivery method'). AADA sees no practical scope to re-design or modify these elements, other than to explicitly prohibit cash as a medium of exchange.

4.3 The other risk factor is, of course, the risk associated with the particular customer. The customer may or may not possess the proceeds of crime. Ordinarily a goods retailer will have no insight into the character or source of funds held by a customer. Unlike a financial institution or a wealth adviser, a retailer's relationship with a customer is purely transactional. A retailer has no legal means or persuasive capacity to glean an insight into a customer's financial affairs.

4.4 The best contribution a vehicle dealer can make to the wider AML/CTF effort is to reliably record a customer's transaction and the source of the customer's electronic funds transfer from an institution or business that is itself subject to CDD obligations (such as a bank or a finance lease provider).

5. Efficient regulation

5.1 AADA is concerned to avoid motor vehicle dealers becoming subject to additional regulatory obligations where fulfilling those obligations would not represent a material gain in the fight against ML/TF. Logically this means that additional regulation that does not generate new information and does not reduce risk should not be imposed.

5.2 A statutory prohibition on acceptance of cash for vehicle sales would be new, simple and effective in ensuring that each transaction is linked to an identifiable flow of funds through a financial institution (which is itself subject to AML/CTF regulation). AADA regards this as efficient.

5.3 By comparison, there is existing state and territory legislation that requires motor vehicle dealers to be licensed and to create and keep records of persons transacting and the vehicles subject of the transaction (which vehicles are also registered). A new law that imposes a new and different set of obligations around identification and record keeping, with additional procedures at further cost, would involve more cost than benefit. AADA regards this as inefficient.

5.4 Any proposed new obligations under federal law must be tested, as incremental changes, for their cost and their benefit. In any event, they must recognise and build upon, rather than duplicate, existing state and territory regulation.

5.5 Proposed new obligations must also be capable of fulfilling their objectives.

6. Possible models

6.1 AADA submits that the Government's AML/CTF objectives would be best and most efficiently achieved by simply legislating to prohibit cash transactions (for vehicle sales) by dealers.

6.2 Existing law provides a record of purchaser, vehicle and price data. Dealers' business and banking records contain details of inbound bank transfers and credit card purchases. All of this information is presently available to law enforcement authorities and can be easily made available for inspection by AUSTRAC. Law enforcement authorities also have access to motor vehicle registers.

6.3 Accordingly, AADA submits that extension of the AML/CTF regime (or parts of it) to motor vehicle dealers is unnecessary and should not occur.

6.4 If franchised new motor vehicle dealers are to be subject to the AML/CTF regime, AADA supports the proposed regime feature that the regime would be inapplicable to dealers who elect not to sell vehicles for cash.

6.5 Lastly, if some form of AML regime is to be applied (with or without opt-out by self-excluding cash transactions), it needs to be a simplified regime. As explained in the Appendix, conduct of dealer-specific risk assessments would be complex, costly and fundamentally unproductive. Likewise, formulation of AML/CTF programs would over-complicate the design and implementation of targeted AML/CTF measures. Suspicious matter reports (SMRs) are unlikely to be generated given the limited information and insights available to dealers.

7. Concluding comments

7.1 AADA is supportive of Government efforts to minimise money laundering and therefore supports efficient and effective steps to that end. AADA believes that legislating to prohibit cash transactions by dealers would be simple, effective and sufficient.

7.2 In addition to making the considered comments above, AADA has answered each of the relevant questions from the consultation paper in the Appendix to this submission.

7.3 AADA wishes to remain engaged with the Attorney-General's Department on this issue and would be grateful for the opportunity to meet to discuss this submission. AADA would also expect to be consulted on any further steps including any contemplation of draft legislation.

7.4 We would be happy to meet with you to discuss our submission and matters raised in other submissions. Please do not hesitate to contact me on mobile 0413 007 833, email dblackhall@aada.asn.au or our Policy Director Michael Deed on mobile 0417 742 956, email mdeed@aada.asn.au.

Yours sincerely



David Blackhall
Chief Executive Officer

Appendix

Questions proposed by Consultation Paper

1. *What are the ML/TF risks posed by high-value dealers conducting transactions involving large sums of cash?*

In relation to motor vehicles, limited. To AADA's knowledge very few new vehicle dealers accept cash and the very low incidence of cash transactions for pre-owned vehicles arises in relation to low value non-luxury cars.

2. *What high-value goods pose a high ML/TF risk in Australia?*

Not motor vehicles, as noted under question 1.

3. *What high-value goods pose a low ML/TF risk in Australia?*

Motor vehicles, as noted under question 1.

4. *Are there transactions conducted by high-value dealers involving small sums of cash that pose high ML/TF risks?*

See question 1.

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

Motor vehicle dealers are licensed and vehicles are registered under state or territory law. Considerable data is generated in relation to buyers and sellers, which could be readily analysed for frequency of trading in terms of number of vehicles and ownership duration. Dealers retain their transactional records about customers, which almost invariably include payment details from electronic funds transfer, credit card or a financier.

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

AADA understands from an industry organisation in the UK that the AML regime is a source of anxiety for affected businesses and imposes a considerable and costly burden on management (in either complying or arranging business processes to lawfully avoid its application). Where it does apply, the information generated is relatively thin.

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

Explicitly not motor vehicles if no cash is involved in their acquisition.

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?*

No comment, except that motor vehicles should be explicitly excluded.

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

Any applicable threshold for motor vehicles should be no lower than \$10,000 (given the threshold transaction reporting trigger of \$10,000) and logically could be aligned with the threshold for application of the luxury car tax (currently \$64,132) (if the regime is to apply).

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)?*

Yes. AADA would be pleased to see no threshold (i.e. a complete prohibition) but the market for low value used cars might justify a low threshold.

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

Substantial, particularly given the low margin nature of the motor vehicle retailing industry. The cost of risk assessments, AML/CTF program formulation and AML/CTF training would be particularly disproportionate and unfair given the lack of discernible differences in risk between dealers. These costs would need to be passed to consumers, and would deteriorate dealers' competitive position vis-à-vis direct vehicle sales (assuming manufacturers and their related corporations would not be defined as HVDs).

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

We are not in a position to comment outside the motor vehicle dealer sub-sector.

13. *How important are cash transactions to HVDs?*

Not important to motor vehicle dealers.

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?*

Yes. They already do.

Model for regulation

- *Should all HDVs be required to enrol with AUSTRAC, or just HVDs that conduct high-value transactions?*

None. Motor vehicle dealers are already licensed and are readily identifiable and accountable from rolls maintained by state and territory governments. An enrolment requirement with a threshold would affect all new motor vehicle dealers unless the threshold was very high.

- *What factors should be taken into account in determining whether an entity is carrying on a business that involves the buying and selling of high-value goods?*

A need for business licensing, significant cash handling and the extent to which used goods retain their value are all factors. In the case of new motor vehicle dealers these factors do not support applying AML regulation. Motor vehicle dealers are already licensed, sellers of new vehicles rarely accept cash and the value of a motor vehicle drops materially when it becomes pre-owned.

- *What CDD obligations should apply to HVDs that conduct high-value cash transactions?*

If an AML regime were to apply, it should be limited to initial customer identification, using the basic KYC rules currently in Chapter 4 of the AML/CTF Rules. It is likely that the 'safe harbour' or 'simplified company verification' pathways would be always sufficient and all that is possible. Licensed motor vehicle dealers generally do not have an ongoing relationship with customers (in the way that a financial institution or wealth manager would) so the usual elements of OCDD would be impossible to accomplish.

- *Do HVDs have any existing CDD obligations that would address the AML/CTF obligations?*

Licensed motor vehicle dealers are obliged by state and territory laws to identify and record the identity of persons with whom they transact (and in some cases, obtain their signatures).

- *Should simplified CDD measures be available for some high-value cash transactions provided by HVDs?*
 - *If yes, in what circumstances?*

Simplified procedures, or no procedures at all, should apply for fleet buyers and buyers for whom the purchase funds come from a financial institution or leasing business.

- *What OCDD obligations should apply to HVDs?*

None. Licensed motor vehicle dealers generally do not have an ongoing relationship with customers (in the way that a financial institution or wealth manager would) so OCDD would be impossible to accomplish.

- *Are there existing OCDD obligations or industry standard practices that address ongoing due diligence obligations under the AML/CTF Act?*

No. Vehicle dealers might recognise some PEPs but would respect their privacy.

- *Should all reporting obligations apply to HVDs?*

While AADA does not support any new reporting obligations, TTRs would be a tolerable obligation because a cash payment of \$10,000 or more is rare. SMRs would be problematic and unreliable, because motor vehicle dealers ordinarily would not have the information or insights to form the requisite suspicions. Any other reporting would be a further addition to dealers' red tape burden and would be unnecessary, as this submission explains.

- *Should enrolled HVDs be able to voluntarily report suspicious matters to the AML/CTF regulator that relate to unregulated services (e.g. where the transaction is not a high-value cash transaction but nonetheless raises ML/TF suspicions)?*

AADA does not support enrolment of licensed motor vehicle dealers. There could be some merit in giving good corporate citizens (in any industry or area of activity) the statutory protections that are needed for voluntary reporting.

- *Should HVDs that do not accept high-value cash transactions and are not regulated under the AML/CTF regime be able to voluntarily report suspicious matters to the AML/CTF regulator?*

Yes, provided they are given the statutory protections that are given to those with an obligation to report.

- *Should HVDs have an obligation to develop and maintain an AML/CTF program?*
 - *If yes, what should the components of the AML/CTF program be?*

No. Even if (contrary to this submission) elements of an AML/CTF regime are applied to motor vehicle dealers, they should be simple and fixed obligations prescribed by legislation. Dealers have no meaningful capacity to develop a risk-based program (as explained in this submission), so a task for each trader to formulate its own AML/CTF program would be onerous and ineffective.

- *Do HVDs that operate internationally already have AML/CTF programs in place?*

Not applicable.

- *What are the implications of a risk-based approach for HVDs?*

At least as far as licensed motor vehicle dealers are concerned, a risk-based approach would be unnecessarily complex and burdensome. AADA understands the importance of risk-based regimes in other industries where the nature of the various types of services, the delivery methods and the jurisdictions involved combine to produce varying degrees of risk. However, in the selling of new vehicles those elements are static. The only risk variable is the one outside the control, and usually outside the knowledge, of the seller - the risk associated with the particular customer. Other than categorising customers into fleet buyers, financed buyers and self-funded buyers (which distinctions may not always be apparent), the seller learns little about the buyer that is relevant to guessing whether the customer poses a higher or lower ML risk.

- *How could professional bodies and/or the AML/CTF regulator assist HVDs in developing AML/CTF systems and procedures suited to their business practices?*

Inevitably professional bodies and AUSTRAC would need to bear a considerable educative and implementation burden for businesses that are not attuned to the types of issues that arise in AML/CTF. While help could be given in designing and implementing compliance processes, that help will, realistically, have a negligible impact on the capacity of businesses to meaningfully formulate SMRs (for example).

- *What internal controls would be appropriate for sole traders?*

Sole traders are in not different position to other vehicle dealers.

- *What records should HVDs that are regulated under the AML/CTF regime keep?*

Dealers currently record identity and transactional information. That information (which is already accessible to law enforcement authorities) should be sufficient, and little else could be practically and reliably collected or retained.

- *To what extent can record-keeping obligations for AML/CTF purposes leverage off other record-keeping obligations or practices that HVDs may have (for example, under taxation or corporation law)?*

See previous answer.

- *Who should monitor and supervise HVDs for compliance with AML/CTF obligations?*
 - *AUSTRAC or existing professional bodies, or both (i.e. co-regulation)?*

The only obvious alternatives are AUSTRAC or current state and territory motor vehicle dealer licensing authorities. AADA would be concerned by the prospect of motor vehicle dealers being expected to pay a supervisory levy to AUSTRAC.

- *What regulatory approach should be adopted for HVDs?*
 - *Risk-based approach or prescriptive?*

AADA has a clear preference for a prescriptive approach, if any.

- *What advice and assistance should the AML/CTF regulator provide to support HVDs to implement the AML/CTF obligations?*

AUSTRAC would need to give simplified and complete guidance on what HVDs are required to do.