

31-1-2017



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](mailto:antimoneylaundering@ag.gov.au)

To whom it may concern,

**RE: Consultation paper. A model for regulation under Australia's anti-money laundering and counter-terrorism financing regime.**

The Australian Institute of Conveyancers Western Australian (AICWA) is the peak body representing Settlement Agents in Western Australia. AICWA's National Secretary has forwarded recent correspondence from your office advising us of the "Consultation Paper" inviting comments and submissions. The comments as set out below reflect the considered view of the AICWA.

The AICWA in principle supports efforts that address and combat money laundering and terrorism financing.

In reviewing the "Consultation Paper" it is AICWA's opinion that the custodian agencies and regulators whom administer various legislation and regulation are best suited to identify any short comings and working with local stakeholders (professional bodies) to facilitate any regulatory changes that could mitigate against ML/TF risk. It is therefore, advisable that the intentions of the Attorney General's Office to develop options should be achieved with the support of custodian agencies responsible for regulation in their respective states and territories.

With respect to licensed settlement agents in Western Australia (WA) there is considerable regulation compelling the collection and supply of private sector information that can assist with identifying the movement of property assets. Of particular interest to your objectives is information collected by the Land Titles Office (Landgate) and the Office of State Revenue. In addition to these local State Government agencies the Australia Tax Office (ATO) has recently embarked on what is commonly referred to as "third party data collection". With the support of Landgate and various other State Government Agencies throughout Australia the ATO's reporting regime encompasses a great many data sets and is underpinned by verification protocols undertaken by conveyancers that assist with the quality and accuracy of information supplied.

While it is not understood whether information collected by the ATO via the "third party data collection" regime can or may be shared with other Federal Departments it is assumed that the robust nature of information collected would be invaluable. It may be quite reasonable to also suggest that the quality of data may render the need for further regulation of the conveyancing profession pointless.

Under 5.3 “**Regulatory impact**” the suggestion is made that “initial cost associated with establishing and implementing AML/CTF systems and controls, and ongoing costs to maintain those systems and controls” would be a cost professionals would bear. This view is likely to meet fierce opposition as there should be no increase to the burden already placed on conveyancers to provide and maintain information. In the event new systems and controls are required, the discussion to identify appropriate funding , provide for training or for the recovery of costs should be a joint discussion that seeks to identify fair outcomes. Any suggestion otherwise is inappropriate and premature given little is known as to what the costs and impacts are likely to occur.

AICWA would like to stress that careful consideration must be given to not overly regulating the property industry as any increase in the disruption to the timely effectiveness of transferring property could prove detrimental. The property industry underpins the economy in WA and any changes to processes and regulation must be considered carefully.

The AICWA has opted not to address all of the “Discussion Questions”. However, we have provided the attached feedback on what we feel are some of the most important questions.

Early identification of instances of ML/TF via robust reporting mechanisms will assist greatly in seizing property assets or intercepting funds. Fast and effective actions such as these could serve as a deterrent and require very little regulation. Avoiding protracted drawn out debate over regulation is preferable and can be achieved if greater care is taken to understand what reporting is currently available other than increasing regulation.

It is AICWA’s belief that with regards to conveyancing, there are currently a great many regulatory and legislative frameworks that support systems and processes ideal for mitigating against ML/TF risk. It is therefore, likely that any further regulation required for conveyancers may be unjustified. The AICWA is not convinced that further regulation aimed at conveyancers in WA is required and would suggest creative approaches to utilising existing information and data.

The AICWA appreciates the opportunity to provide a submission and welcomes any further discussion should the need arise.

Yours sincerley,



Dion Dosualdo  
Executive Officer

## Discussion Questions – AICWA Responses

### PREAMBLE

The Discussion Paper notes the following:

*The international standards for AML/CTF obligations for lawyers, notaries and other independent legal practitioners centre on:*

- *customer due diligence (customer identification and verification, ongoing due diligence, transaction monitoring and enhanced due diligence)*
- *applying enhanced due diligence to politically exposed persons*
- *assessing and mitigating the ML/TF risks associated with new technologies*
- *specific measures for relying on customer due diligence performed by third parties*
- *suspicious matter reporting*
- *internal controls and special measures for mitigating risks for foreign branches and subsidiaries, and*
- *enhanced due diligence when dealing with higher risk countries.*

*For example, where a client is a business entity that cannot be found on the internet, avoids personal contact, uses a free-of-charge email address and uses multiple bank accounts without good reason. If a legal practitioner or conveyancer is not collecting enough information to fully understand who the client is and the nature of the transactions, they will not be able to identify red flags and conduct a proper assessment of the extent to which the client exposes them to ML/TF risks.*

**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?**

Whilst no specific reference to the AML/CTF regime is made Regulation 7 of Settlement Agents Code Of Conduct 2016 reads:

**Duty of care, diligence and skill**

When acting as a settlement agent for a client a licensee must exercise due care, diligence and skill.

The Discussion Paper notes that “In 2010, the Property Exchange Australia (PEXA) was established as an online property exchange network to facilitate national electronic conveyancing. Under the regulatory framework conveyancers must:

- a) Confirm a sellers right to deal in the land being sold, and
- b) Take reasonable steps verify the identity of any individual buyer/seller signing as client and/or as authorised officer of a legal entity (e.g. Association, Corporation, etc.)

These requirements have existed in WA in relation to sellers for many years. Landgate have indicated that they intend aligning requirements for both paper & electronic settlements such that the requirements in PEXA will apply to both.

**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?**

Section 51 of the Settlement Agents Act 1981 reads:

**Audits of trust accounts**

(1) Every person who carries on business as a settlement agent during the whole or any part of a year shall cause his trust accounts for that year, or part of a year, as the case may be, to be audited by an auditor duly qualified or approved under this Division.

(2) The auditor shall conduct the audit in accordance with accepted auditing practice, including selective testing when the auditor considers it appropriate and in accordance with such other requirements as are determined by the Commissioner.

The Commissioner sets the scope of said audit. This could be expanded to mitigate any ML/TF risks.

Conveyancers are required to undertake annual Compulsory Professional Development. The Commissioner set the subject material of CPD. Subject matter could be expanded to address/mitigate any ML/TF risks

**6. To what extent are due diligence obligations captured by existing regulation for legal practitioners and conveyancers at a national, state or territory level?**

Refer answer to question 4.

**7. Is there evidence of a systemic problem with legal practitioners allowing ML or TF to occur by (negligently, recklessly or complicity) failing to institute adequate measures?**

No.

**8. Is more regulatory oversight of legal practitioners and conveyancers justifiable?**

No.

**What professional activities undertaken by legal practitioners and conveyancers should become 'designated services' for the purposes of the AML/CTF Act?**

None

**Should legal practitioners and conveyancers be required to enrol with AUSTRAC?**

No.

If a conveyancer suspected that a person (or their agent) is not the person they claim to be then existing regulations would prevent them from proceeding with the transaction.

Settlement Agents Code Of Conduct 2016 includes the following regulations which would prevent conveyancers completing the transaction if they had sufficient grounds to submit a SMR:

**12. Misleading or deceptive conduct**

When acting as a settlement agent for a client a licensee must not engage in conduct that is misleading or deceptive or is likely to mislead or deceive within the meaning of the Australian Consumer Law (WA) Part 2-1. Unconscionable conduct

**13. Unconscionable conduct**

When acting as a settlement agent for a client a licensee must not engage in unconscionable conduct within the meaning of the Australian Consumer Law (WA) Part 2-2.

***Should all reporting obligations apply to legal practitioners and conveyancers?***

No, feedback from AICWA members indicates that cash transactions over \$10,000 rarely, if ever, occur.

***Should legal practitioners and conveyancers have an obligation to develop and maintain an AML/CTF program?***

No, existing regulatory framework & low incidence of transactions involving AML/CTF make it unnecessary. The typical business structure also makes it unworkable.

***To what extent can record-keeping obligations for AML/CTF purposes leverage off other record-keeping obligations or practices (for example, under taxation or corporations law, and laws governing the use of legal practitioners' trust accounts)?***

Settlement Agents Regulations 1982 – Regulation 6F reads:

**Records under Act s. 50(1)(b)**

- (1) A record shall be —
- (a) kept in written form; and
  - (b) kept for a period of not less than 6 years from the date on which the money was received; and
  - (c) readily accessible.

(2) Where a receipt has been given for money received, a record shall contain the information contained in the receipt and may take the form of a duplicate copy of the receipt.

(3) Where money has been received by electronic transfer, a record shall contain the information specified in regulation 6E(b), (c), (d), (e) and (f) and, for that purpose, the reference in regulation 6E(b) to “receipt” is to be read as a reference to “record”.

This completes the AICWA submission and response to the consultation paper and discussion questions.